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Andrew Sorokowski

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# The 1977 USSR Constitution:

## A Document of Social, National and International Consolidation

By ANDREW SOROKOWSKI

*Member, Class of 1979*

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ON SATURDAY, June 4, 1977 the front pages of *Pravda* and *Izvestiia* carried the draft of a new constitution of the USSR.<sup>1</sup> The culmination of sixteen years of sporadic activity by a commission originally set up by N. S. Khrushchev,<sup>2</sup> the document aroused mild surprise and considerable skepticism in the West.<sup>3</sup> The Soviet authorities, however, launched a

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1. *Pravda*, June 4, 1977, at 1; *Izvestiia*, June 4, 1977, at 1. See also *KOMMUNIST*, May 1977, at 7. For English text, see *Moscow News*, June 11, 1977, at 8, col. 1 (Supp.); *London Times*, June 6, 1977; *CURRENT DIGEST OF THE SOVIET PRESS*, June 29, 1977, at 1, col. 1.

The May issue of *KOMMUNIST*, the Party journal, reported the submission of the draft by the Constitutional Commission headed by General Secretary Leonid I. Brezhnev to the May plenum of the Party Central Committee. Having approved it by a decree of May 24th, the Central Committee sent it to the Presidium of the Supreme Soviet. The Presidium approved the draft on May 27th and submitted it for nationwide discussion. *KOMMUNIST*, May 1977, at 5-7; see also *VEDOMOSTI VERKHOVNOGO SOVETA SSSR*, June 15, 1977, at 375. The new Soviet anthem, submitted simultaneously with the constitution and likewise approved by a decree of the Presidium of the Supreme Soviet on May 27, 1977, replaced the war-time anthem praising Stalin, which had itself replaced the "Internationale." The new anthem begins with a reference to the "unshakeable union of free republics" and has nationalist overtones. *Id.* at 375a-375b.

2. See notes 67, 73, 74, and accompanying text, *infra*. This pace is traditional—imperial codification commissions sat for 115 years without significant progress, H. BERMAN, *JUSTICE IN THE USSR* 205 (rev. ed. 1963) [hereinafter cited as *BERMAN*].

3. The western press largely confined itself to observing that (1) the Constitution remained essentially the same, (2) it conflicted with reality, (3) it strengthened Party rule, (4) it narrowed civil and national rights. Reports in *Le Monde* and the *New York Times*, recalling the expulsion of N. Podgorny, President of the Supreme Soviet, from the Party Politburo at the May Plenum, emphasized the new Article 118. This article created a post of First Vice-President and thus would allow General Secretary Brezhnev to assume formal state leadership while leaving ceremonial functions to his subordinate. The apparently expanded civil rights provisions, it was observed, were subject to and

full-scale national discussion, inviting the public to propose amendments to the draft.<sup>4</sup> When on October 7, 1977 a final text was adopted,<sup>5</sup> scores of articles had been altered.<sup>6</sup> The Soviet state could now meet the sixtieth anniversary of the Bolshevik revolution with the fourth and longest constitution in its history.<sup>7</sup>

The 1977 Constitution contains three fundamental new features.<sup>8</sup> First, the new document clearly proclaims the leading rôle of the Communist Party in Soviet society. Second, the powers of the Union Republics are newly and more precisely delineated. Third, the constitution defines the status and policy of the USSR in world affairs. Together, these

therefore nullified by the interests of the State, while new emphasis on the Party rôle counterbalanced "democratic" changes in the state structure. The reports devoted considerable attention to the announced replacement of the "dictatorship of the proletariat" by the "state of the whole people" in the new stage of "mature socialism and building of communism." The new chapter on foreign policy, noted the Times Moscow correspondent, partly echoed Helsinki and would soon be tested at Belgrade, but beyond this he found the changes "largely cosmetic." *Le Monde's* Moscow correspondent remarked on the constitutional mention of arbitration and 1960's style economic decentralization. He pointed out that the Union Republics' right to have their own military formations had been withdrawn (art. 18 (b) of the 1936 Constitution), and expressed surprise that they retained the right to secede (art. 17 of the 1936 Constitution; art. 72 of the 1977 Constitution). *Le Monde*, June 2-8 at 1, col. 2; *id.* at 7, col. 4 (weekly ed.); *N.Y. Times*, June 4, 1977 at 1, col. 6.

4. Citizens were encouraged to send their proposals to the press. Their letters varied in tone and content: a reader from Kazakhstan felt that the Constitution should place state interests before civil rights; a lieutenant stationed in Poland proposed that persecution of criticism be declared punishable by law. By summer's end editorial offices had received some 67,000 letters. *DER SPIEGEL*, Sept. 5, 1977, at 136, 138. Though ostensibly more democratic, this "public discussion" followed the example set by Stalin in promulgating the 1936 Constitution. See note 49, *infra*.

Shortly after the nationwide discussion began, on June 16, 1977, the Sixth Session of the Supreme Soviet held its 9th meeting and elected L. I. Brezhnev President of the Presidium of the Supreme Soviet in Podgorny's place. *KOMMUNIST*, June 1977, at 4. In his acceptance speech on the 17th, Mr. Brezhnev referred to the "deep political significance" of the Party's May decision to allow combination of the presidential post with that of General Secretary of the CPSU. *Id.* at 7-10.

5. *Pravda*, Oct. 8, 1977, at 3; *Izvestia*, Oct. 8, 1977, at 3. For English translation, see *CURRENT DIGEST OF THE SOVIET PRESS*, Nov. 9, 1977 at 1. The third sentence of art. 172 of the draft stated that the constitution would go into effect when adopted, *KONSTITUTSIIA* (Constitution) pt. IX, art. 172 (1977 draft, USSR) [hereinafter cited as *DRAFT*]. In the final text, adopted October 7, 1977, that sentence of what had become art. 173 was deleted, perhaps for superfluity, *KONSTITUTSIIA* (Constitution) pt. IX, art. 173 (1977 USSR) [hereinafter cited as *KONST.*].

6. *E.g.*, The proposal of the officer in the Polish garrison (see note 4, *supra*) was adopted, *KONST.* pt. II, ch. 7, art. 49. Such public participation and discussion is a major point of the new constitution itself. Sharlet, *The New Soviet Constitution*, *PROBLEMS OF COMMUNISM*, Sept.-Oct. 1977, at 14-18, 24.

The changes discussed hereinafter are to be found in both draft and final text, unless otherwise noted.

7. For an account of the 60th anniversary celebrations, see *N. Y. Times*, Nov. 8, 1977, at 3, col. 1.

8. For the official Soviet interpretation, see Mr. Brezhnev's May 24, 1977 report before the CPSU Central Committee plenum. L. I. BREZHNEV, *ON THE DRAFT CONSTITUTION OF THE UNION OF SOVIET SOCIALIST REPUBLICS* (1977). Three non-Soviet analyses of the draft are Artemov, *Stalinsko-brezhnevskaja konstitutsiia*, *POSEV*, August, 1977, at 4; Prokop, *Z pozitsii konsolidatsii imperii, nastupu i strakhu*, *SUCHASNIST*, September 1977, at 93; Sharlet, *supra* note 6, at 4.

features symbolize a consolidation of social, national and international achievements.<sup>9</sup>

The new features of the 1977 Constitution derive their importance from their relation to three fundamental characteristics of the Soviet state. The USSR is dominated by the Communist Party of the Soviet Union, hereinafter CPSU, which makes the principal political decisions and directs socio-economic policy.<sup>10</sup> It is also a federal multinational state, comprising fifteen Union Republics and over a hundred nations and nationalities.<sup>11</sup> Finally, it is a major world power.

The new features of the constitution have a double significance. On the one hand, they reflect a conscious development of political ideology and legal theory. On the other hand, they are a response to contemporary conditions, to internal and external centrifugal tendencies.<sup>12</sup> While social

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9. This theme recurs in discussions of the contemporary USSR. Thus, Prokop speaks of the Soviet leaders' desire to "consolidate" their empire, Prokop, *supra* note 8, at 104; Breslauer refers to the "consolidation" of Mr. Brezhnev's power, Breslauer, *The Twenty-fifth Congress: Domestic Issues*, in *THE TWENTY-FIFTH CONGRESS OF THE CPSU 7* (A. Dallin ed. 1977). Mr. Brezhnev himself has spoken of the "consolidation of the federal principles" in the draft constitution, BREZHNEV, *supra* note 8.

Two types of consolidation are here in issue. On the one hand, there is the actual consolidation of Soviet power mirrored in the constitution. On the other hand, the embodiment of power relations in the supreme legal document of the state is in itself a consolidation of power.

The present analysis does not deal with the practical effect of the constitution upon Soviet conditions, but rather with their effect upon the document itself. The latter approach may well be the more fruitful. We shall therefore not enter into a discussion of the broad and crucial question of Soviet legality. It should be noted, however, that a correct assessment of this problem depends upon an understanding of Soviet legal concepts in their ideological context. Western critics all too often overlook the special Marxist-Leninist interpretations of familiar terms such as "democracy." See note 119, *infra*. Given these special interpretations, as well as certain important qualifications, Soviet practice has to a great extent complied with constitutional norms. In fact the new constitution seems to surpass its predecessor in obliquely sanctioning official practices of ostensibly questionable legality. For example, new language in Article 60 mandates "socially useful activity" and condemns "the evasion of socially useful labor." The latter principle was added in the final text. KONST. pt. II, ch. 7, art. 60. Compare 1936 CONST. ch. X, art. 130. Thus an artist, for example, may now be legally punished for what is deemed to be socially useless work. Freedom of artistic creation is granted only "in accordance with the goals of communist construction." KONST. pt. II, ch. 7, art. 47. Citizens repeatedly fired from their jobs for political reasons may presumably also be punished under the Constitution for evasion of "socially useful" activity. New language in Article 62 obligates citizens to "safeguard the interests of the Soviet state" and "help strengthen its might and prestige." KONST. pt. II, ch. 7, art. 62. Compare 1936 CONST. ch. 133. Thus, for example, any attempt to implement Article 72, on the right of union-republican secession, would clearly run afoul of Article 62. A questionable criminal conviction such as that discussed in note 107, *infra*, would now enjoy incontestable constitutionality.

10. See Meissner, *Party Supremacy: Some Legal Questions*, PROBLEMS OF COMMUNISM, March-April 1965, at 28-33.

11. See note 199, *infra*.

12. E.g., Brzezinski speaks of "centrifugal" forces in the East Bloc, Z. BRZEZINSKI, *THE SOVIET BLOC* 500, 503 (1967); Prokop refers to the "centrifugal" forces working among the non-Russian

differentiation threatens Party control,<sup>13</sup> a plethora of nationalisms threatens Russian dominance at home<sup>14</sup> and communist unity abroad.<sup>15</sup>

The three fundamental features of the 1977 Constitution should therefore be examined in relation to their theoretical and historical background on the one hand, and to their contemporary context on the other. Such an examination will reveal the 1977 Constitution as a document of consolidation.

## I. THEORETICAL BACKGROUND

The Soviet constitution is the principal document of Soviet State Law,<sup>16</sup> which deals with fundamental state legislation.<sup>17</sup> Several principles of Soviet State Law directly involve the Party, the federal structure and the international position of the USSR. They thus reveal the importance of these three features of the USSR.

The leading role of the Party is seen as a basic condition of the development of Soviet State Law.<sup>18</sup> Party directives are a source of Soviet State Law.<sup>19</sup> "Democratic centralism,"<sup>20</sup> the main functional principle of

nations, Prokop, *supra* note 8, at 104. A Soviet scholar writing in 1969 specifically asserts that "there are no centrifugal forces" in the Soviet federal state, *THE SOVIET STATE AND LAW*, 103 (V.M. Chkhikvadze ed. 1969).

13. See H. SKILLING & F. GRIFFITHS, *INTEREST GROUPS IN SOVIET POLITICS* (1971).

14. Rakowska-Harmstone, *The Dialectics of Nationalism in the USSR*, *PROBLEMS OF COMMUNISM*, May-June 1974, at 1-22; Szporluk, *Natsii SRSR u perspektivi 2000 roku*, *SUCHASNIST'*, October 1977, at 76. For several recent examples of the relationship between modernization and nationalism in the USSR, see the collection *NATIONALISM AND HUMAN RIGHTS* (I. Kamenetsky ed. 1977).

15. See Triska, *Foreign Policy: Communist States and Parties*, in *THE TWENTY-FIFTH CONGRESS OF THE CPSU*, *supra* note 9, at 95-99.

16. There is debate on whether the term "state law" should be replaced by "constitutional law." For an exchange in the Soviet state law journal between the late Prof. A. I. Lepeshkin and Prof. V. F. Kotok supporting, respectively, retention and replacement of the term "state law," see the section entitled *Polemika* in *SOVETSKOE GOSUDARSTVO I PRAVO*, February 1971, at 102-13. Partisans of the latter view emphasize the programmatic aspect of a constitution. Although in the minority, they apparently prevailed with regard to the 1977 Constitution. Sharlet, *supra* note 6, at 5-6.

17. According to modern Soviet legal theory, Soviet State Law determines the principles of socialist law. Its sources are not only the Constitution of the USSR, but the Constitutions of the Union and Autonomous Republics, as well as decrees (*postanovleniia*) and statutes (*zakony*) of the USSR and republican Supreme Soviets, edicts (*ukazy*) of their Presidia, decrees of their Councils of Ministers, joint decrees, CPSU directives, and the most important decisions of local Soviets. L. GRIGORYAN & I. DOLGOPOLOV, *FUNDAMENTALS OF SOVIET STATE LAW* 12-15 (B. Shchetinin ed. 1971) [hereinafter cited as GRIGORYAN & DOLGOPOLOV].

18. *Id.*

19. *Id.* For a hierarchy of Soviet legal acts, see Vanneman, *The Hierarchy of Laws in the Communist Party-State System in the Soviet Union*, 8 *INT'L L.* 285.

20. See 11 *ENCYCLOPEDIA OF SOVIET LAW* 221-22 (F. Feldbrugge ed. 1973).

the CPSU, is a principle of State Law as well.<sup>21</sup> Since a basic characteristic of the Soviet state structure is its federal form, some scholars consider socialist federation, regional autonomy,<sup>22</sup> self-determination and the equality of peoples<sup>23</sup> as major State Law principles. Others, conscious of the USSR's role as a world power, cite principles of foreign policy, such as peaceful coexistence<sup>24</sup> and socialist internationalism.<sup>25</sup>

A Soviet constitution can be examined from an ideological as well as a legal point of view. Legally, it is the "fundamental law."<sup>26</sup> It is the prime source of Soviet State Law,<sup>27</sup> and prevails over the union-republican constitutions and over statutes.<sup>28</sup> Ideologically, it is the expression of the interests of the ruling class. It reflects the socio-economic system and the correlation of class forces at a given historical moment.<sup>29</sup>

21. GRIGORYAN & DOLGOPOLOV, *supra* note 17, at 44.

22. E.g., S. S. Kravchuk, cited in GRIGORYAN & DOLGOPOLOV, *supra* note 17, at 44.

23. A. DENISOV & M. KIRICHENKO, SOVIET STATE LAW 17-18 (1960) [hereinafter cited as DENISOV & KIRICHENKO].

24. E.g., S.I. Ronin, cited in GRIGORYAN & DOLGOPOLOV, *supra* note 17, at 44. For definitions of some of these terms, see ENCYCLOPEDIA OF SOVIET LAW, *supra* note 20. The relative importance of these tenets may vary with time, since by virtue of its Marxist-Leninist character Soviet State Law changes with historical conditions. As a result, new constitutions must appear from time to time.

In addition to the works on Soviet State Law cited in notes 12, 17 and 23, *supra*, see generally SOVETSKOE KONSTITUTIONNOE PRAVO (S. I. Rusinova & V. A. Rianzhin eds. 1975) [hereinafter cited as Rusinova & Rianzhin]; B. V. SHCHETININ, PROBLEMY TEORII SOVETSKOGO GOSUDARSTVENNOGO PRAVA (1974); THE LAW OF THE SOVIET STATE (A. Y. Vyshinsky ed. 1948), [hereinafter cited as Vyshinsky].

25. A general bibliography of Soviet legal literature is RUSSIAN AND SOVIET LAW (William E. Butler ed. 1976). A general Soviet legal bibliography is IURIDICHESKAIA LITERATURA 1831-1970 (T. E. Ksenzova ed. 1972). Two Soviet State Law bibliographies are SOVETSKOE GOSUDARSTVENNOE PRAVO—BIBLIOGRAFIYA 1917-57 (V.F. Kotok ed. 1958) and SOVETSKOE GOSUDARSTVENNOE (KONSTITUTIONNOE) PRAVO—BIBLIOGRAFIYA 1957-70 (1972).

26. *Osnovnoi Zakon*.

27. V. A. Rianzhin states that the constitution is not the only fundamental law, and must therefore be distinguished as the highest law, Rusinova & Rianzhin, *supra* note 24, at 46. For a description of the legal function of a Soviet constitution, see Vanneman, *supra* note 19, at 292. One may distinguish between the "juridical" (written) constitution and the "political" constitution comprising actual power relations; the former can further be divided into the "formal" constitution (the single Fundamental Law) and the "substantive" (consisting of legal norms of constitutional status), Meissner, *Die Verfassungsentwicklung der Sowjetunion seit dem Tode Stalins*, 22 JAHRBUCH DES ÖFFENTLICHEN RECHTS DER GEGENWART 103-104 (new series) [hereinafter cited as Meissner].

28. DENISOV & KIRICHENKO, *supra* note 23, at 20; GRIGORYAN & DOLGOPOLOV, *supra* note 17, at 21, 25.

29. DENISOV & KIRICHENKO, *supra* note 23, at 19. According to Marxism-Leninism, history progresses as a series of class conflicts. These conflicts require periodic constitutional expression. Once socialism is achieved, however, these "contradictions" need no longer be "antagonistic." Class conflict disappears along with classes in the new "state of all the people." DENISOV & KIRICHENKO, *supra* note 23, at 20; GRIGORYAN & DOLGOPOLOV, *supra* note 17, at 21, 22-24. For the theory of "non-antagonistic contradictions" see V. KOZLOVSKII, ANTAGONISTIC AND NON-ANTAGONISTIC CONTRADICTIONS (1954). Mao Tse-Tung's 1957 "Hundred Flowers" speech applied this theory to

Three aspects of the Soviet concept of a constitution are particularly conspicuous in the 1977 Fundamental Law. First, a Soviet constitution, as both historical analysis and political program, exhibits the dual nature characteristic of Marxism itself.<sup>30</sup> It interprets the past and reflects the present while planning the future. Second, its programmatic points are determined by the CPSU. The detailed and highly theoretical Party Program is presented in the constitution in general legislative terms.<sup>31</sup> Third, a Soviet constitution is federal. It governs a union of theoretically sovereign independent states, and prevails over their respective constitutions.<sup>32</sup> In sum, the Soviet constitution reflects the contemporary USSR as a federal Party-state with a well-defined historical role.

## II. HISTORICAL BACKGROUND

The Preamble of the 1977 Constitution speaks of "preserving the continuity of the ideas and principles" of the three previous Soviet constitutions.<sup>33</sup> In a state purportedly governed according to Marxist-Leninist ideology, historical continuity is essential. Each new step must prove logical and consistent with past development. To evaluate the "historical" as well as the "programmatic" aspect of the new Constitution it is therefore necessary to survey its forebears.

The first Soviet constitution was adopted by the Russian Socialist Federated Soviet Republic, hereinafter RSFSR, on July 10, 1918.<sup>34</sup>

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relations between state and people as well as among classes. For a discussion, see Churchward, *Contemporary Soviet Theory of the Soviet State*, 12 *SOVIET STUDIES* 407-10. For the text of Mao's speech, see *THE NEW COMMUNIST MANIFESTO* 136-147 (D. Jacobs ed. 1961). The theory of non-antagonistic contradictions serves to accommodate the application of the Marxist view of history as class conflict to the conditions of an established socialist state. Khrushchev did not, however, speak of conflicts between state and people. Meissner, *supra* note 27, at 110. Kotok and Farberov merely speak of "variations in the disposition of social forces consisting of friendly classes," Kotok & Farberov, *The Constitution of the USSR—A Developing Fundamental Law for Society and the State*, *SOVIET LAW AND GOVERNMENT*, Winter 1973-1974, at 4 (trans. of article in *SOVETSKOE GOSUDARSTVO I PRAVO*, June 1973, at 3).

30. See Rusinova & Rianzhin, *supra* note 24, at 64. Stalin and his theoretician A. Y. Vyshinsky rejected the idea that a constitution is a program. "Soviet Constitutions," writes Vyshinsky, "represent the sum total of the historic path along which the Soviet state has travelled. At the same time, they are the legislative basis of the subsequent development of state life . . . Soviet constitutions are not a program." Vyshinsky, *supra* note 24, at 87. This view has since been abandoned, Kotok & Farberov, *supra* note 29, at 18. For a discussion of programmatic elements in socialist constitutions, see Shmailova, *Pravovaya priroda programmykh polozhenii sotsialisticheskikh konstitutsii*, *SOVETSKOE GOSUDARSTVO I PRAVO*, May-June 1975, at 52. On the dual nature of Socialist constitutions, see Z. BRZEZINSKI, *THE SOVIET BLOC* 77 (1967).

31. Rusinova & Rianzhin, *supra* note 24, at 52.

32. GRIGORYAN & DOLGOPOLOV, *supra* note 17, at 25, 20.

33. KONST. Preamble.

34. KONSTITUTSIYA (Constitution) OF 1918 (RSFSR) [hereinafter cited as 1918 CONST.], in J. TRUSKA, *CONSTITUTIONS OF THE COMMUNIST PARTY-STATES* 2 (1968) [hereinafter cited as TRUSKA].

Together with the "October Decrees" of the first month of the Bolshevik revolution, it formed an "aggregate" constitution of the Soviet state.<sup>35</sup> The most famous of the October Decrees, Lenin's "Declaration of Rights of the Laboring and Exploited People," was joined, on his suggestion, to the constitution proper,<sup>36</sup> and formed with it "a single Fundamental Law" of the RSFSR.<sup>37</sup> The Declaration proclaimed Russia a republic of Soviets of Workers', Soldiers' and Peasants' Deputies organized on the basis of "a free union of free nations, as a federation of Soviet national republics."<sup>38</sup> It was followed by an announcement of the dictatorship of the proletariat.<sup>39</sup> This constitution proclaimed the soviets' seizure of political power, determined its distribution, and outlined socio-economic policy.<sup>40</sup> Headed by a Bolshevik declaration,<sup>41</sup> it was a document of revolution.

The formation of the Union of Soviet Socialist Republics on December 30, 1922, necessitated a new constitution reflecting the "federal" nature of the new state.<sup>42</sup> Like its predecessor, the 1924 Constitution<sup>43</sup> began with a declaration defining the new state and its tasks.<sup>44</sup> This "Declaration of Union" set forth the reasons for creating a "voluntary association of these sovereign nations on a basis of equality, each Republic reserving to itself the right of free withdrawal from the Union."<sup>45</sup> It was followed by a Covenant of Union and eleven articles, most of which set out the new federal state structure and delineated union and republican competences.<sup>46</sup>

The next twelve years saw the "victory of socialist social relations" through Stalin's forced collectivization, industrialization and liquidation of antagonistic classes.<sup>47</sup> Soviet society was entering the stage of con-

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35. DENISOV & KIRICHENKO, *supra* note 23, at 36; GRIGORYAN & DOLGOPOLOV, *supra* note 17, at 18-19, 28-31.

36. GRIGORYAN & DOLGOPOLOV, *supra* note 17, at 37. The Declaration had been published Nov. 16, 1917.

37. This was stated in the Preamble. TRISKA, *supra* note 34, at 2.

38. *Id.* at 2-14. For the evolution of the national territorial principle of Soviet federation embodied in this constitution, see R. PIPES, THE FORMATION OF THE SOVIET UNION 111-12 (1968).

39. 1918 CONST. art. 2, ch. 5, para. 9, in TRISKA, *supra* note 34, at 4.

40. 1918 CONST. in TRISKA, *supra* note 34, at 2.

41. For a discussion of the relation between the form and content of a constitution, see Rusinova & Rianzhin, *supra* note 24, at 52-55.

42. See generally R. PIPES, *supra* note 38. For an account of the debate on the national question, in which Stalin's more centralist conceptions prevailed over Lenin's and were embodied in the 1924 Constitution, see *id.* at 269-93.

43. It was ratified by the Second All-Union Congress of Soviets on January 31, 1924.

44. KONSTITUTSIYA (Constitution) of 1924 (USSR) [hereinafter cited as 1924 CONST.] in TRISKA, *supra* note 34, at 17.

45. *Id.*, at 18.

46. TRISKA, *supra* note 34, at 17-28; GRIGORYAN & DOLGOPOLOV, *supra* note 17, 37-40.

47. DENISOV & KIRICHENKO, *supra* note 23, at 91; GRIGORYAN & DOLGOPOLOV, *supra* note 17,



summed socialism and nascent communism.<sup>48</sup> The new balance of class forces required a new constitution. After publication of a draft and "discussion" by the public, a final text was approved on December 5, 1936.<sup>49</sup>

Three characteristics of this "Constitution of victorious socialism"<sup>50</sup> stand out in relation to the 1977 Constitution. First, the Communist Party, the determining force in society and state, received but incidental mention.<sup>51</sup> Second, the equality of nationalities was reaffirmed,<sup>52</sup> and the competence of the Union Republics more fully defined. Third, the concept of a constitution as a program was rejected.<sup>53</sup> As a result, no foreign policy could be declared.<sup>54</sup>

During the next forty years much important legislation and consequent constitutional amendments were enacted. The Second World War, conquest and annexation, "de-Stalinization," administrative reforms and counter-reforms, each left their constitutional marks.<sup>55</sup> Be-

at 91; J. STALIN, HISTORY OF THE ALL-UNION COMMUNIST PARTY (BOLSHEVIKS): A SHORT COURSE 331 (1938), *quoted in* Vyshinsky, *supra* note 24, at 124.

48. *Id.* Marxism-Leninism teaches that the workers' state must pass through two stages of communism: the stage of the building of socialism, and the stage of the building of communism. The first, characterized by the dictatorship of the proletariat and proletarian democracy, has been subdivided into two phases: the phase of building the base of socialism, and that of building a developed socialist society. The second stage, characterized by democracy for all the people in a socialist state of all the people, also has been subdivided into two phases: that of building the material and technical base of communism, and that of building a developed communist society. The last phase culminates in popular communist self-administration, that is, in full communism. The USSR is now officially at the threshold of the second stage, and a new constitution is therefore appropriate. Rusinova & Rianzhin, *supra* note 24, at 63-64; MATERIALY XXIV S'EZDA KPSS 38 (1971), *quoted in* Rusinova & Rianzhin, *supra* note 24, at 64.

49. Vyshinsky, *supra* note 24, at 121-23. The promulgation of the 1977 Constitution followed much the same procedure. *See* note 4, *supra*. For English translation of the 1936 Constitution, *see* TRUSKA, *supra* note 34, at 37. For English text as amended to 1965, *see id.* at 59. For English text as amended to 1976, *see* CONSTITUTION (FUNDAMENTAL LAW) OF THE UNION OF SOVIET SOCIALIST REPUBLICS (1976). For article-by-article analysis and commentary, *see* R. MAURACH, HANDBUCH DER SOWJETVERFASSUNG (1955). For a modern dissident's analysis, *see* Volpin, *On the Constitution of the USSR*, in INSTITUTE ON SOCIALIST LAW, PAPERS ON SOVIET LAW (1977).

50. For a discussion of the main characteristics, *see* Vyshinsky, *supra* note 24, at 123-24 (paraphrasing J. STALIN, REPORT ON THE DRAFT OF THE USSR CONSTITUTION (1936)). *See also* GRIGORYAN & DOLGOPOLOV, *supra* note 17, at 41-42; DENISOV & KIRICHENKO, *supra* note 23, at 91-97.

51. *See* note 105, *infra*.

52. KONSTITUTSIYA (CONSTITUTION) OF 1936, ch. II, art. 13; ch. X, art. 123; chs. IV, VI (USSR) [hereinafter cited as 1936 CONST.].

53. J. STALIN, REPORT ON THE DRAFT OF THE USSR CONSTITUTION 16 (1936), *quoted in* Vyshinsky, *supra* note 24, at 87. Programmatic points are generally found in the preamble and first few articles of a socialist constitution, Shmailova, *supra* note 30, at 54. The "Stalin Constitution," unlike its predecessors, had no such programmatic declaration.

54. The 1918 and 1924 Constitutions did indicate a foreign-policy program. *See* note 244, *infra*.

55. Meissner counts 69 formal amendments between 1936 and 1972, 45 of them occurring since 1953. Meissner, *supra* note 27, at 125. Rianzhin states that between 1937 and 1974 there were around

tween 1936 and Stalin's death in March, 1953 the Union Republics were increased in size and number due to Soviet territorial expansion.<sup>56</sup> In 1944 they were empowered to carry on diplomatic relations with foreign states as well as to maintain their own military formations.<sup>57</sup> Most of the amendments made between 1953 and Khrushchev's fall in October, 1964 concerned the federal structure and the organs of state power and administration.<sup>58</sup> The formal powers of the Union Republics were extended,<sup>59</sup> and there was considerable reshuffling of ministries.<sup>60</sup>

While state legislation affected the constitution directly, Party activity bore long-term constitutional implications. As First Secretary of the CPSU, Khrushchev advocated a stronger Party role.<sup>61</sup> Just as the "dictatorship of the proletariat" was to be replaced by the "state of the whole people," so the CPSU would change from the "vanguard of the proletariat" into the "Party of the whole people."<sup>62</sup> As such it would outlive the state, surviving well into the period of communism. The state could safely wither away, for in Khrushchev's view the Stalinist theory of "capitalist encirclement" no longer held true.<sup>63</sup> This ideological change had important implications for Soviet foreign policy, since the achievement of communism at home was no longer held to require the destruction of the "imperialist camp" abroad.<sup>64</sup>

Entry into the era of communist construction, Khrushchev declared in January 1959, would require a major constitutional reform.<sup>65</sup> In October 1961, however, he announced that what was needed was a new

250 changes altogether, affecting 73 articles. Rusinova & Rianzhin, *supra* note 24, at 81. For a list of amendments as of 1960, see DENISOV & KIRICHENKO, *supra* note 23, at 375-409, excerpted in TRISKA, *supra* note 34, at 54-58. For a discussion, see DENISOV & KIRICHENKO, *supra* note 23, at 98-107; GRIGORYAN & DOLGOPOLOV, *supra* note 17, at 42-43; Rusinova & Rianzhin, *supra* note 24, at 81-83; Meissner, *supra* note 27, at 125-76.

56. See note 55, *supra*.

57. Statute (*zakon*) of Feb. 1, 1944. See V. VASILENKO & I. LUKASHUK, UKRAINIAN SSR IN CONTEMPORARY INTERNATIONAL RELATIONS 23-26 (1975); 1936 CONST. arts. 18 (a), 18 (b) (1944 USSR).

58. See note 55, *supra*.

59. 1936 CONST. ch. II (as amended 1957). See note 195, *infra*.

60. *Id.* chs. III-VI (as amended 1957). Other changes concerned the courts, the rights and duties of citizens, and elections. *Id.* chs. IX-XI (as amended 1958). See note 195, *infra*.

61. Meissner, *supra* note 27, at 109-10.

62. *Id.* at 111.

63. *Id.* at 110. Under Stalin's theory, the surrounding capitalist threat justified the strengthening of the Soviet state, and its protection from both external and internal threats.

64. Romashkin, *Novyi etap vrazoitii aovetskogo gosudarstva*, SOVETSKOE GOSUDARSTVO I PRAVO, Oct. 1960, at 31-40, trans. in CURRENT DIGEST OF THE SOVIET PRESS No. 40, at 3-7 (1960), reprinted in TRISKA, *supra* note 34, at 82.

65. Meissner, *supra* note 27, at 193.

constitution altogether.<sup>66</sup> To this end a Constitutional Commission was set up the next year, headed by the First Secretary himself.<sup>67</sup>

Meanwhile, legal scholars had begun to expand upon Khrushchev's doctrines. In their view, the first stage of communism would be accompanied by growth of the Party's social influence, while the second stage would see the fusion of all social groups into a homogeneous whole.<sup>68</sup> Throughout both stages, State functions would gradually be transferred to "mass public organizations," of which the CPSU was foremost.<sup>69</sup> Soviet national groups, having begun to converge during the first stage, would merge fully in the second.<sup>70</sup>

With Khrushchev's fall in October 1964, these legislative, ideological and theoretical currents lost much of their impetus. De-Stalinization

66. *Id.* 193-94. For an excerpt from the 1961 CPSU Program, see *THE SOVIET LEGAL SYSTEM* 9 (2d ed. J. Hazard, I. Shapiro & P. Maggs 1969).

67. Artemov, *supra* note 8, at 5. On the proposal of the Party Central Committee, the Supreme Soviet passed a decree on the development of a draft constitution on April 25, 1962. Rusinova & Rianzhin, *supra* note 21, at 84.

68. See the articles by V.F. Kotok and D.A. Gaidukov in *SOVETY DEPUTATOV TRUDIASHCHIKHSIA*, No. 9, 1959, at 111, cited in *TRISKA*, *supra* note 30 at 81; S.N. BRATUS' & M.S. SAMOSHCHENKO, *OBSHCHAYA TEORIYA SOVETSKOGO PRAVA* 86, 89-90 (1966), trans. and quoted in *THE SOVIET LEGAL SYSTEM*, *supra* note 66, at 12; GRIGORYAN & DOLGOPOLOV, *supra* note 17, at 43; Rusinova & Rianzhin, *supra* note 24, at 63; Kotok & Farberov, *supra* note 29, at 5. See also BERMAN, *supra* note 2, at 281-84 (1963). Perhaps the most influential Soviet article, based on a lecture given at a July, 1960 conference in Moscow under the auspices of the Academy of Sciences' Institutes of Philosophy and of State and Law, as well as of the local Party organization, was Romashkin, *supra* note 64, at 77. P. S. Romashkin set forth eleven proposals for the revised constitution: it should (1) reflect the USSR's world position, (2) announce a program, (3) re-define the social structure, (4) indicate the Party's role, (5) describe the transformation of socialist property into communist property, (6) eliminate taxes, (7) extend the economic plan to the world socialist system, (8) re-characterize labor and the distribution of goods, (9) extend and emphasize citizens' rights and duties, (10) extend union-republican rights while fostering the drawing-together of nations, (11) reflect changes concerning state representative, administrative, and judicial agencies, as well as government accountability and public discussion. *Id.* As elaborated in the above and other studies, the characteristics of the approaching first stage of communism were to be (1) the building of the material and technical base for communism, (2) the increased role of the Communist Party as leader of the *whole* people, (3) the education (*vospitaniye*) of the masses in preparation for self-administration through non-juridical norms, (4) the increased participation of the masses in state administration through various public organizations on a voluntary basis, (5) the gradual eradication of the distinction between state and society, (6) the merger of the rights and the duties of citizens, (7) total, direct democracy, and (8) the gradual convergence of various social and national groups. These conditions would prepare the way for the second, final stage of communism, which would culminate after an indeterminate time in total communism on a world scale. This second stage would be characterized by (1) the gradual withering-away of the state, (2) the transfer of state functions to public mass organizations, (3) public self-administration on a voluntary basis, without coercion, (4) the transformation of juridical norms of social behavior into norms of "communist morality," (5) the complete merger of all social and national groups into a homogeneous society of a new type.

69. See Romashkin, *supra* note 68, at 78, 84.

70. *Id.* 87; Kotok & Farberov, *supra* note 29, at 16.

ground to a halt.<sup>71</sup> Many of Khrushchev's reforms were undone.<sup>72</sup> Although Party theoreticians continued to elaborate upon his theses, the Constitutional Commission was slow to embody them in a new Fundamental Law.<sup>73</sup> It was only after more than a dozen years and two major re-shufflings of its membership that the Commission produced the draft of a new USSR constitution.<sup>74</sup>

### III. THE PRINCIPAL CHANGES AND THEIR SIGNIFICANCE

Numerous changes are embodied in the 1977 draft constitution and in the final text.<sup>75</sup> They can be classified as formal, quantitative and substantive.

The formal changes are considerable.<sup>76</sup> Most apparent is the new structure: instead of thirteen chapters divided into articles, there is a preamble, as in the 1918 and 1924 constitutions, followed by nine parts, with all but the last two divided into chapters.<sup>77</sup> The clear division between society and state implicit in the structure of the 1936 constitution has been eliminated.<sup>78</sup> Similarly, the distinction between state power and administration has been de-emphasized.<sup>79</sup> The chapter on citizens' rights and duties has been moved forward and joined with a chapter on citizenship in a new part on the state and the individual.<sup>80</sup> The

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71. Meissner, *supra* note 27, at 117.

72. For some examples of re-centralization, see note 211, *infra*.

73. Artemov, *supra* note 8, at 5. Artemov notes that "Stalin's successors took 16 years to revise what Stalin had prepared in 16 months." Professor Hazard suggests that the content of a draft of a new Chinese constitution which appeared in 1970 removed the need for Soviet haste in producing a competing constitution, Hazard, *Communist Constitutionalism in a New Form*, STUDIES IN COMPARATIVE COMMUNISM, Jan. 1971, at 114. It has even been suggested that Khrushchev's less theoretically-minded successors were not particularly enthusiastic about drawing up a new constitution, Gilson, *Khrushchev, Brezhnev, and Constitutional Reform*, PROBLEMS OF COMMUNISM, Sept.-Oct. 1972, at 69.

74. For English translation, see Moscow News, June 11, 1977, at 1 (Supp.). The Russian text was published as KONSTITUTSIYA (OSNOVNOI ZAKON) SOIUZA SOVETSKIKH SOTSIALISTICHESKIKH RESPUBLIK (1977).

75. See table.

76. For the significance of form, see note 41, *supra*.

77. KONST.

78. 1936 CONST. chs. I-II; DRAFT. This corresponds to theory, Kotok & Farberov, *supra* note 29, at 6.

79. 1936 CONST. chs. III-VI; KONST. pts. V-VI.

80. 1936 CONST. ch. X; KONST. pt. II. On the significance of the more prominent position of this chapter in the draft, see the interview with Professor M. A. Krutogolov, *Der Spiegel*, Sept. 5, 1977, at 140.

chapter on the electoral system has also been moved forward, and joined with two other chapters in a part on the Soviets of People's Deputies.<sup>81</sup> This emphasizes the development of "socialist democracy" through a system of elected soviets.<sup>82</sup>

Another type of formal change is the alteration of chapter titles. Thus, the word "fundamentals"<sup>83</sup> has been added in the first and sixth parts, clearly defining the functions of the provisions therein and lending the document the dignity of generality.<sup>84</sup> The chapter title "Fundamental Rights and Duties of Citizens" has been renamed "Fundamental Rights, Freedoms and Duties of Citizens of the USSR" and incorporated into a part bearing the new title "The State and the Individual."<sup>85</sup> These changes advertise the broadening of individual liberty promised by ideology. The chapter title "The State Structure" has been changed to "The National-State Structure."<sup>86</sup> The new name calls attention to the federal multinational form of the USSR.

Other changes concern the chapters themselves. Four are entirely new.<sup>87</sup> Two other chapters incorporate previous material.<sup>88</sup> Another two were formed by splitting and supplementing a chapter of the previous constitution.<sup>89</sup> Additionally, there are many new individual articles.<sup>90</sup> Articles of the 1936 Constitution have been eliminated,<sup>91</sup> combined<sup>92</sup> and divided,<sup>93</sup> while the language of many has been supplemented,<sup>94</sup> reduced<sup>95</sup> or modified.<sup>96</sup> An innovation is the reference in some articles to specific laws, such as the Law on the Supreme Court and the Law on Procuratorial Supervision.<sup>97</sup>

81. KONST. pt. IV.

82. See BREZHNEV, *supra* note 8, at 14.

83. *Osnovy*.

84. KONST. pts. I, VI.

85. 1936 CONST. ch. X; KONST. pt. II, ch. 7.

86. 1936 CONST. ch. II; KONST. pt. III.

87. KONST. pt. I, chs. 3, 4, 5; pt. IV, ch. 12.

88. *Id.* pt. II, ch. 6; pt. IV, ch. 14.

89. 1936 CONST. ch. IX; KONST. pt. VII, chs. 20, 21.

90. See table.

91. *E.g.*, 1936 CONST. ch. II, art. 18(b).

92. *E.g.*, *id.* ch. III, arts. 42-45, combined in KONST. pt. V, ch. 15, art. 111.

93. *E.g.*, 1936 CONST. ch. IX, art. 111, split into KONST. pt. VII, ch. 20, arts. 157, 158.

94. *E.g.*, 1936 CONST. ch. V, art. 65, supplemented in KONST. pt. V, ch. 16, art. 130.

95. *E.g.*, the famous maxim, "He who does not work shall not eat" (adapted from 2 Thessalonians, 3:10), 1936 CONST. ch. I, art. 12, deleted in KONST. pt. I, ch. 2, art. 14.

96. *E.g.*, *Soviets of Working People's Deputies*, 1936 CONST. ch. I, art. 3, are now *Soviets of People's Deputies*, KONST. pt. I, ch. 1, art. 2; *id.* pt. IV *passim*. This is in line with the establishment of the "state of the whole people."

97. KONST. pt. VII, ch. 20, art. 153 and *id.* pt. VII, ch. 21, art. 168, respectively.

Quantitatively, the 1936 Constitution of 146 articles has been enlarged, first to 173 articles in the draft, then to 174 in the final text.<sup>98</sup>

It is in the substantive changes, however, that the fundamental new features of the 1977 Constitution most clearly appear. Pronouncements of the drafters themselves emphasize the provisions on the role of the Party, the powers of the Union Republics, and the international position of the Soviet Union.<sup>99</sup> In his report to the Party Central Committee, which he delivered along with the draft as chairman of the Constitutional Commission,<sup>100</sup> L. I. Brezhnev referred to the increased role of the CPSU.<sup>101</sup> He called attention to the new definition of the USSR as an "integral federal multinational state," and to the new provisions for Union Republics' initiative and participation in the central government.<sup>102</sup> The Preamble of the new constitution, which presumably reflects the drafters' main concerns, cites ensuring national security, strengthening peace, and developing international cooperation as immediate state tasks.<sup>103</sup> The concluding section refers to the "international responsibility" of the Soviet people.<sup>104</sup>

### A. THE LEADING ROLE OF THE CPSU

In contrast to its predecessors, the new constitution gives striking prominence to the CPSU.<sup>105</sup> In the very first clause of the Preamble, it mentions Lenin's Communist Party as leader of the Bolshevik revolution.<sup>106</sup> It further declares that "the leading role of the Communist Party, vanguard of the whole people, has grown."<sup>107</sup> Article 6 proclaims the

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98. 1936 CONST.; DRAFT; KONST.

99. See notes 100, 103, *infra*.

100. L. I. BREZHNEV, *supra* note 8.

101. *Id.* at 12.

102. *Id.* at 19-21.

103. KONST. Preamble.

104. *Id.*

105. In the previous Constitution, by contrast, the Party was mentioned in only two places. In connection with the right of association, it was named as a mass organization in which the most active and politically conscious citizens would unite, and as the vanguard of the working people and leading core of all their organizations. As part of Article 126, this language was relatively inconspicuous. See 1936 CONST. ch. X, art. 126. The 1977 counterpart of Article 126 is Article 51 which, however, is shorter and does not mention the Party or any other public organizations. See KONST. pt. II, ch. 7, art. 51. The only other mention of the Party in the old constitution was in Article 141, where Party organizations were named among those empowered to choose candidates for elections. See 1936 CONST. ch. XI, art. 141. The corresponding Article 100 of the new constitution likewise lists the Party first. See KONST. pt. IV, ch. 13, art. 100.

106. KONST. Preamble.

107. *Id.* For Party history, see generally L. SCHAPIRO, *THE COMMUNIST PARTY OF THE SOVIET UNION*. For a description of its organization and function, see L. SCHAPIRO, *THE GOVERNMENT AND*

party to be not only the "leading and guiding force" of society, but also the "nucleus of its political system" as well as of "all state and public organizations."<sup>108</sup> The second paragraph of Article 6 describes the Party's role as ideological guide and planner.<sup>109</sup>

Two new constitutional provisions indirectly reflect the Party's stronger role. Under the new Article 90, elections to the Union and republican Supreme Soviets will be held at intervals of five rather than four years.<sup>110</sup> The resulting synchronization with the quinquennial Party congresses<sup>111</sup> may symbolize as well as expedite a further meshing of Party and state. Secondly, the creation of a vice-presidential post in the Presidium facilitates the combination of the highest state and Party positions.<sup>112</sup> In this way, the constitution serves to formalize the hitherto unofficial rule of the CPSU.

This results logically from Soviet ideology. While Lenin did not feel that the Party's role should be mentioned in the constitution<sup>113</sup> — indeed

POLITICS OF THE SOVIET UNION, ch. 3 (1967). For an analysis of its legal relation to the state, see Meissner, *Party Supremacy: Some Legal Questions*, 14 PROBLEMS OF COMMUNISM, March-April 1965, 28.

108. KONST. pt. I, ch. 1, art. 6, para. 1.

109. *Id.* para. 2. This may be taken both as a statement of present fact and as a programmatic declaration. Programmatic rules generally appear in the preamble and first few articles of a constitution, and cannot be contradicted by subsequent norms, Shmailova, *supra* note 30, at 54. It should be noted, however, that in the immediately following Article 7 it is stated that other public organizations shall participate in state and public administration and in resolving political, economic, social and cultural questions. Articles 7 and 100 (guaranteeing other organizations the right to nominate candidates) could thus be taken to sanction other political parties. Yet this right theoretically has existed throughout the period of socialism. Professor Krutogolov has said in an interview that no one would be punished for proposing to found another political party, such as a peasants' party, as long as it supported the same communist aims as the CPSU. An anti-Soviet party would of course be out of the question. *Der Spiegel*, Sept. 5, 1977, at 142. But see B. V. SHCHETININ, *supra* note 24, at 117-119. The author asserts that in the socialist state more than one political party is allowed as long as it recognizes the dictatorship of the proletariat. He ascribes the one-party system in the USSR to the failure of other parties to gain support or participate in the government, to popular will, and to the alleged fact that the CPSU represents the interests of the whole people. Bourgeois parties, he explains, cannot exist in socialist countries because they no longer have a class basis. *Id.* Since non-"working" classes have officially been eliminated in the Soviet Union, and all the working people are represented by the CPSU, there can be no class basis for another party. It therefore appears that even if one could found a second political party, it would not be officially recognized as such. Professor Krutogolov's statement, even with its qualifications, seems both misleading and insignificant. For the account of an alleged attempt to organize a political party in the USSR in 1959, see note 137, *infra*.

110. KONST. pt. IV, ch. 12, art. 90.

111. Artemov, *supra* note 8, at 7.

112. KONST. pt. V, ch. 15, art. 120.

113. 1 ENCYCLOPEDIA OF SOVIET LAW, *supra* note 20, at 143. He did, however, advocate a leading role for the Party in a system of "socialist democracy." V. I. LENIN, 39 POLNOE SOBRANIE SOCHINENII 295-96, cited in Guliev & Shchiglik, *Partiia i gosudarstvo v sisteme sovetskoi sotsialisticheskoi demokratii*, SOVETSKOE GOSUDARSTVO I PRAVO, April 1975, at 16. See also Wolfe, *Leninism*, in MARXISM IN THE MODERN WORLD 45, 76-89 (M. Drachkovitch ed. 1965).

the 1918 and 1924 constitutions make no such mention — Soviet legal theoreticians consider the Party Statute to be the core of the substantive constitutional law of the state.<sup>114</sup> Formal recognition of the Party's role figured prominently in the discussion of constitutional reform begun in 1959.<sup>115</sup> In his July, 1960 report P. S. Romashkin stated that the transfer of state functions to public organizations and the development of communist morality required a greater Party role, which should be reflected in "two or three places" in the constitution, namely, in the introductory part, and in the sections on the social structure and on citizens' rights and duties.<sup>116</sup> At a January, 1969 meeting of the All-Union Scientific Research Institute for Soviet Legislation, V. E. Guliev expressed the opinion that the Party's leading role exhibits not only a political but also a constitutional-law character.<sup>117</sup> It was clear that this role would be recognized in the new constitution.<sup>118</sup>

The doctrine of a stronger Party role has been linked to that of democratization. While this relationship may appear paradoxical, it depends on the special meaning of "socialist democracy."<sup>119</sup> Since the Party is recognized as the representative of the people's interests, popular participation in its decision-making would be superfluous. Rather, the "democratic" element of "socialist democracy" refers to the implementation of basic Party decisions. The people's primary role is to administer. In this light, assertions that the Party ensures socialist democracy, that its growing role actually makes possible the development of the organs of popular representation, and even "reflects the breadth and depth of socialist democracy," are perfectly reasonable.<sup>120</sup> The practical effect of this "democratization of a new type" is that in the "developed socialist

114. Meissner, *supra* note 27, at 30.

115. See note 68, *supra*.

116. Romashkin, *supra* note 68 at 84. The suggestion was carried out. Indeed, the idea of again having a preamble was advocated by Romashkin and his colleagues, Meissner, *supra* note 107, at 196. Nevertheless, the opinions of scholars are not always indicative of official policy. According to Meissner, Romashkin and Denisov were the only constitutional lawyers on the Constitutional Commission, and both were eliminated in the re-organization of December 19, 1966. *Id.* at 198. On the other hand, this does seem to testify to the strengthened role of the Party.

117. Meissner, *supra* note 27, at 200.

118. Soviet jurists point to the recent constitutions of "brotherly socialist countries," such as the 1971 Bulgarian and the 1972 Hungarian constitutions, which give greater emphasis to the Party's role. Mikhaleva, *Konstitutsionnoe zakonodatel'stvo zarubezhnykh sotsialisticheskikh stran perioda postroeniia razvitoogo sotsializma*, PRAVOVEDENIE, May-June 1975, at 48.

119. For a definition of socialist democracy, see 1 *ENCYCLOPEDIA OF SOVIET LAW*, *supra* note 20, at 220. Guliev and Shchiglik describe democracy in a developed socialist society as representing the will of all classes and layers of society insofar as they coincide with the interests of the working class, Guliev & Shchiglik, *supra* note 113, at 16.

120. Kositsyn, *Gosudarstvo razvitoogo sotsialisticheskogo obshchestva*, SOTSIALISTICHESKAYA ZAKONNOST', July, 1977, at 11.



society" of the present, the masses must undergo a "drawing-in" <sup>121</sup> into the administration and decision-making of state and society.<sup>122</sup> Simultaneously, the Party must cultivate in them a "communist social consciousness."<sup>123</sup> It appears that the people may participate in government to the extent that they conform to Party norms.

This type of democratization is a vital element of the Soviet historical scheme. It is a prerequisite to the transfer of state functions to social organizations, and to the general convergence of state and society.<sup>124</sup> These processes are accompanied by a convergence of Party and state, for although at present the two must remain legally distinct,<sup>125</sup> Leninism demands that in the final stage of communism the state, in effect, be transformed into the Party.<sup>126</sup> The process that emerges from these doctrines is clear: as the state merges with society, it is metamorphosed into the Party, creating a new entity, a fusion of Party and society.

The practical effect of both doctrine and constitution is a strengthening of the Party. With the passing of the dictatorship of the proletariat and the waning of the state, power must pass to some other entity. This entity is the CPSU. Despite emphatic Soviet denial,<sup>127</sup> the inevitable result, now constitutionally legitimized, appears to be a dictatorship of the Party — at least, until men learn to govern themselves without coercion.<sup>128</sup>

121. *Vovlechenie*.

122. See Kositsyn, *supra* note 120, at 6, 8.

123. This was demanded by the 1961 Party Statute as well as by the decisions of the XXIII and XXIV Party Congresses, Kotok & Farberov, *supra* note 29, at 16.

124. This is reflected in the GDR Constitution of 1968, which has in this sense been taken as a model for the new Soviet constitution, Kotok & Farberov, *supra* note 29, at 6-11. For the role of law in the transfer of state functions to social organizations, see BERMAN, *supra* note 2, at 281-82; Schlesinger, *Social Law—I*, 12 SOVIET STUDIES 56, especially at 79, and *Social Law—II*, 12 SOVIET STUDIES 145.

125. Guliev & Shchiglik, *supra* note 113, at 17.

126. BERMAN, *supra* note 2, at 281. Prof. Berman concludes that this doctrine is designed to symbolize a twin policy of (1) extending Party influence and (2) drawing more people into public administration "in order to strengthen the society and eliminate the shortcomings of a rigid bureaucratism." *Id.* at 91.

127. Kositsyn, *supra* note 120, at 11. Prof. Kositsyn describes the Party as a force which can "unify . . . manifestations of democracy into one current and direct it into the necessary channel, in the interests of the whole people." He refers to the new constitution in this connection. *Id.*

128. See Artemov, *supra* note 8, at 9, col. 1. A well-known Soviet dissident holds the same view, Bukovsky, *An Appeal to the Heads of State and Government of the Thirty-Five Countries that Signed the Helsinki Agreements*, THE NEW YORK REVIEW OF BOOKS, October 13, 1977, at 44, col. 1. A Soviet scholar writing in 1969 throws some indirect light on the official view of the Party's role in the period of total communism. He refers to Lenin's comparison of the Party to a conductor who directs the orchestra but does not actually play the instruments. Two pages later, in a description of the future communist society which avoids all mention of the Party, he characterizes the prevailing power and authority as not political but "akin to those of an orchestra conductor." THE SOVIET STATE AND LAW, *supra* note 12, at 86, 88-89. The implication is unmistakable.

## B. A UNITARY, FEDERAL AND MULTINATIONAL STATE

Numerous modifications in the 1977 Constitution serve to re-define the powers of the Union Republics and the rights of the nations inhabiting them. On the one hand, the Constitution represents the static principles of sovereignty, socialist federation and national self-determination as a symbolic right assuring equality. On the other, it declares a dynamic policy of development, convergence and merger of peoples. Parts III, IV, and VI, dealing with the national-state structure and the union and republican organs of state power and administration, generally reflect the former.<sup>129</sup> The latter appears in the Preamble and in certain articles of Parts I, II, and VII, concerning the social-political-economic structure, the state and the individual, and justice.<sup>130</sup> The first group contains adjustments in the federal balance of power, some favoring the center, others the Republics. The second group presents a nationality program of ultimately centralizing import.

### 1. The Powers of the Union Republics

Of the sections on the federal structure and organs, Part III is central. Chapter 8 defines the Soviet federal state.<sup>131</sup> Article 70 declares the USSR to be a "unitary, federal and multinational state."<sup>132</sup> The historical basis of the Union is the self-determination of nations; its legal basis is socialist federalism.<sup>133</sup> Both legally and historically, the union is purportedly voluntary.<sup>134</sup> In its second paragraph, the article emphasizes the unity of the Soviet nations.<sup>135</sup>

Article 72, declaring the Union Republics' right to secede from the USSR, is not new but rather is significant in its survival through three constitutions.<sup>136</sup> Repeatedly advocated by Lenin as a symbol of free and equal union, it remains purely symbolic.<sup>137</sup>

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129. KONST. pts. III, IV, VI.

130. *Id.* pts. I, II, VII.

131. *Id.* pt. III, ch. 8.

132. *Id.* pt. III, ch. 8, art. 70.

133. *Id.*

134. *Id.*

135. DRAFT pt. III, ch. 8, art. 69; KONST. pt. III, ch. 8, art. 70.

136. KONSTITUTSIYA (constitution) OF 1923 art. 2, para. 4 (USSR); 1936 CONST. ch. II, art. 17; KONST. pt. III, ch. 8, art. 72.

137. See note 191 and accompanying text, *infra*. Soviet scholars emphasize the unlimited and irrevocable nature of this right. Claiming that no Republic has desired to exercise it, they present this as evidence of the "monolithic" nature of the Soviet federal state. *E.g.*, Vyshinsky, *supra* note 24, at 103. But see the account of a 1959 attempt to exercise the secession right in UKRAINS'KI IURYSTY PID SUDOM KGB (I. Maistrenko ed. 1968). The seven members of the "jurists' group" were accused of

Article 73, defining Union jurisdiction, exhibits some reorganization. New clauses empower the Union to establish uniform legislative regulation throughout the country, to pursue an integral social and economic policy, and to determine the USSR's relations with international organizations.<sup>138</sup> The new Article 75 affirms the sovereignty and territorial integrity of the USSR.<sup>139</sup>

Chapter 9 specifically concerns the Union Republics. The new first paragraph of Article 76 defines a Union Republic as a sovereign Soviet socialist state.<sup>140</sup> In the second paragraph, based on previous Article 15 and declaring the Republics' right to exercise state authority, the adverb "independently"<sup>141</sup> has been moved forward, affording greater prominence.<sup>142</sup> In the third paragraph, however, on the republican constitutions, the phrases "with due account for the features of the Republic" and "in conformity with the Constitution of the USSR" have been interchanged, thus emphasizing the latter requirement.<sup>143</sup>

Article 77 is entirely new.<sup>144</sup> The first paragraph grants each Union Republic the right to participate in resolving questions within USSR jurisdiction.<sup>145</sup> The second correspondingly assigns to it the duty to facilitate the exercise of Union power, and to ensure comprehensive economic and social development on its territory, evidently as part of all-Union integration.<sup>146</sup> A third paragraph added in the final text concerns coordination and control of enterprises, institutions, and organizations of Union subordination on questions within the Republics' jurisdiction.<sup>147</sup>

The predecessor of Article 80, on a Union Republic's foreign affairs activity, was created by virtue of a 1944 law which made all the Union Republics potential subjects of international law, enabled two of them to

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forming the "Ukrainian Workers' and Peasants' Party" in order to advocate secession of the Ukrainian SSR from the Soviet Union. Their leader, a lawyer and Party member named Lev Lukianenko, was tried for treason and sentenced to death. The sentence was commuted to fifteen years of imprisonment. After his release in 1976, Mr. Lukianenko continued to defend Ukrainian national rights as a member of the Kiev Group to Promote the Implementation of the Helsinki Accords. Considered by the authorities to be an especially dangerous state criminal, he was again arrested December 12, 1977. N. Y. Times, December 24, 1977, at 3, col. 5.

138. KONST. pt. III, ch. 8, art. 73 (4), (5), (10). Its predecessor is 1936 CONST. ch. II, art. 14.

139. KONST. pt. III, ch. 8, art. 75.

140. *Id.* pt. III, ch. 9, art. 76, para. 1. The word "sovereign" was added in the final text.

141. *Samostoiateľno*.

142. *Id.* pt. III, ch. 9, art. 76, para. 2.

143. *Id.* para. 3.

144. *Id.* pt. III, ch. 9, art. 77.

145. *Id.* para. 1.

146. *Id.* para. 2. The latter duty was added in the final text.

147. *Id.* para. 3.

develop a limited international legal personality, and gave the Soviet Union two extra seats in the United Nations.<sup>148</sup> The new version contains the additional phrase "participate in the activity of international organizations."<sup>149</sup> Aside from the practical advantages for the USSR, this addition fulfills the theoretical requirement that the Soviet nations' state forms receive the fullest development.

The final phrase of Article 15, stating that the USSR shall protect the Republics' sovereign rights, is now given separate recognition as Article 81.<sup>150</sup> It has been re-phrased, however, in the passive voice.<sup>151</sup> This article closes Chapter 9.

But here there is a striking omission. The companion to the predecessor of Article 80, former Article 18(b), has no counterpart in the new constitution.<sup>152</sup> Article 18(b), based like its companion on a 1944 statute, read as follows: "Every Union Republic shall have its own republican military formations."<sup>153</sup> This wartime gift to the loyal Republics was indeed a temporary measure. Theoretically, its revocation should further national uniformity. Practically, it permits further centralization.<sup>154</sup>

Part V, on the higher organs of state power and administration of the Union,<sup>155</sup> is divided into chapters on the Supreme Soviet and the Council of Ministers.<sup>156</sup> Article 112 is noteworthy. While previously the Presidium could convene extraordinary sessions of the Supreme Soviet at its

148. *Id.* pt. II, ch. 9, art. 80. See note 195, *infra*. 1936 CONST. ch. II, art. 18. See Uibopuu, *International Legal Personality of Union Republics of USSR*, 24 INT'L & COMP. L.Q. 811 (1975) (abridging and translating H. J. UIBOPUU, *DIE VÖLKERRECHTSSUBJEKTIVITÄT DER UNIONS-REPUBLIKENDER UdSSR* (1975)). A typical Soviet work, emphasizing the international legal personality of a Union Republic, is V. VASILENKO & I. LUKASHUK, *THE UKRAINIAN USSR IN CONTEMPORARY INTERNATIONAL RELATIONS* (1975).

149. But USSR jurisdiction, which formerly governed USSR representation in international relations as well as general procedure for union-republican foreign relations, 1936 CONST. ch. II, art. 14 (1), is now extended to USSR as well as union-republican relations with international organizations. KONST. pt. III, ch. 8, art. 73 (10). The Republics' new right under Article 80 is therefore as much subject to USSR control as the old foreign-relations right. That right, furthermore, is no longer reinforced by the republican Supreme Soviets' right to establish representation in international relations, 1936 CONST. ch. IV, art. 60 (5); KONST. pt. VI, ch. 17, art. 137. See note 148 *supra*. On the practical insignificance of previous art. 60 (5), see R. MAURACH, *supra* note 49, at 213-14, 110-11.

150. KONST. pt. III, ch. 9, art. 81.

151. *Id.* See also 1936 CONST. ch. II, art. 15.

152. 1936 CONST. ch. II, art. 18 (b). But this article had little practical effect. R. MAURACH, *supra* note 49, at 115.

153. *Id.* See note 57, *supra*, note 195, *infra*.

154. For commentary on this omission, see Artemov, *supra* note 8, at 7, col. 1.

155. We shall not deal with the chapters on the Autonomous Republics (pt. III, ch. 10), Regions and Areas (pt. III, ch. 11), which have three and two entirely new articles, respectively. The word *vysshie* in the title of part V can be translated as either "higher" or "highest;" Soviet translations prefer the former.

156. KONST. pt. V, chs. 15, 16.

discretion or on proposal by a Union Republic, Article 112 now additionally provides for a convocation on the recommendation of at least one third of the deputies of either chamber.<sup>157</sup> Insofar as the Chamber of Nationalities represents the interests of the Union Republics, this is an extension of their power.

Article 113 is mostly new. It grants the right to initiate legislation in the Supreme Soviet to the Union Republics, among others, as represented by their higher organs of state power.<sup>158</sup> The last paragraph of the next article, which continues the description of legislative procedure, allows a Union Republic to recommend that a draft law be submitted for public discussion or vote.<sup>159</sup>

Part VI sets forth the union-republican structure of representative and administrative state organs.<sup>160</sup> Chapter 17 begins with Article 137, which defines the powers of the Supreme Soviet of a Union Republic.<sup>161</sup> According to the new second paragraph, these powers are derived from the constitutions of the USSR and the given Union Republic.<sup>162</sup> The third paragraph, enumerating matters within the republican Supreme Soviet's exclusive competence, omits three specific powers found in its predecessor.<sup>163</sup> First, the exercise of the right of amnesty and pardon is no longer listed.<sup>164</sup> By the 1936 Constitution, the amnesty power came under general USSR jurisdiction,<sup>165</sup> while the Presidium of the USSR Supreme Soviet was specifically empowered to grant pardon.<sup>166</sup> A union-republican Supreme Soviet could, however, grant amnesty and pardon to citizens sentenced by the Republic's judicial bodies.<sup>167</sup> Now, the Presidium of the USSR Supreme Soviet is specifically empowered to grant amnesty as well as pardon,<sup>168</sup> while the union-republican Supreme Soviets are empow-

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157. 1936 CONST. ch. III, art. 46; DRAFT pt. V, ch. 15, art. 100; KONST. pt. V, ch. 15, art. 112. In the final text the old phrase "or on a proposal by a Union Republic" was placed before rather than after this new phrase, apparently to emphasize republican rights. *Id.*

158. KONST. pt. V, ch. 15, art. 113.

159. *Id.* pt. V, ch. 15, art. 114, the second paragraph of which is based on 1936 CONST. ch. III, art. 39. The last paragraph is new.

160. KONST. pt. VI.

161. Entitled "Fundamentals of the Structure of the Organs of State Power and Administration in the Union Republics," Part VI is divided into three chapters corresponding to the Union-Republic, Autonomous-Republic, and local levels, of which only the first shall here be discussed. KONST. pt. VI, ch. 17, art. 137 combines, alters and supplements 1936 CONST. ch. IV, arts. 57, 59 and 60.

162. KONST. pt. VI, ch. 17, art. 137, para. 2.

163. *Id.* pt. VI, ch. 17, art. 137, para. 3.

164. 1936 CONST. ch. IV, art. 60 (4); KONST. pt. VI, ch. 17, art. 137.

165. 1936 CONST. ch. II, art. 14 (24).

166. *Id.* ch. III, art. 49 (10).

167. *Id.* ch. IV, art. 60 (4).

168. KONST. pt. V, ch. 15, art. 121 (11).

ered to do neither.<sup>169</sup> Second, while the Union Republics retain the right to enter into bilateral foreign relations and may now also participate in international organizations,<sup>170</sup> their Supreme Soviets no longer have the right to establish their representation in such international relations.<sup>171</sup> Third, the omission of former Article 18(b) has nullified the section granting the Republics the power to determine the organization of their military formations.<sup>172</sup> The USSR Supreme Soviet, however, now has the power to form a central Council of Defense.<sup>173</sup>

New powers granted the republican Supreme Soviets in Article 137 are the power to ratify plans for social development, to form organs accountable to them, and to submit laws to referenda.<sup>174</sup>

Article 138 omits detailing the composition of the Presidium of a Union Republic and leaves this question to the republican constitution.<sup>175</sup> An added appositive phrase describes the organ's function and accountability.<sup>176</sup>

## 2. Nationality Policy

Changes in other parts of the Fundamental Law concern the nations inhabiting the Union Republics. The historical section of the Preamble declares that the Soviet power has ended national enmity, and praises the unification of the Soviet republics in the USSR.<sup>177</sup> It states further on that the friendship among nations has been consolidated. A "new historical community of people, the Soviet people" has appeared "on the basis of the drawing-together of all social layers and classes,"<sup>178</sup> as well as of the juridical and actual equality of all nations and nationalities, and their cooperation.<sup>179</sup>

The drawing-together of social groups evidently precedes the convergence of nations. National differences will presumably remain for

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169. *Id.* pt. VI, ch. 17, art. 137.

170. 1936 CONST. ch. II, art. 18 (a); KONST. pt. VI, ch. 17, art. 137.

171. See note 149 and accompanying text, *supra*.

172. 1936 CONST. ch. IV, art. 60 (6); KONST. pt. VI, ch. 17, art. 137.

173. KONST. pt. V, ch. 15, art. 121 (14). Compare 1936 CONST. ch. II, art. 14 (7).

174. KONST. pt. VI, ch. 17, art. 137, para. 3, 4.

175. *Id.* pt. VI, ch. 17, art. 138. Compare 1936 CONST. ch. IV, art. 61. While this appears to be a grant of power to the Union Republics, it should be remembered that the republican constitutions must conform to that of the USSR. KONST. pt. III, ch. 8, art. 73 (11).

176. KONST. pt. VI, ch. 17, art. 138. The republican Presidium is described as "a continuously functioning agency of the Union-Republic Supreme Soviet that is accountable to the latter for all its activity." *Id.*

177. KONST. Preamble. The latter sentence was added in the final text.

178. In the final text the phrase "and classes" was added, emphasizing the idea that in the period of socialism there remained two classes, workers and peasants. See 1936 CONST. ch. I, art. 1.

179. This last phrase was added in the final text.

some time after all class distinctions have disappeared. Indeed, nowhere does the Preamble mention a *national* drawing-together. Yet the next paragraph, describing the working people as "patriots and internationalists," implies that merely ethnic patriotism has already been supplanted by loyalty to the multinational Soviet state and the world communist movement.<sup>180</sup> The apparently paradoxical phrase expresses the "dialectical" unity of internationalism and Soviet patriotism.

While the Preamble does not mention the doctrine of development and convergence of nations, the first article of the new chapter on "Social Development and Culture" declares it directly.<sup>181</sup> The states shall create the conditions for, *inter alia*, the "all-round development and drawing-together of all nations and nationalities of the USSR."<sup>182</sup>

Just how the state is to create such conditions is indicated at various places in the document.<sup>183</sup> Prominently placed is a new article stating that the USSR economy shall be an "integral national-economic complex."<sup>184</sup> This is the material basis and prime condition for the convergence of nations. Similarly, Article 25 establishes a "uniform system of education."<sup>185</sup> Such a system would facilitate closer control over national culture and consciousness.

Relevant articles also concern citizens' rights, freedoms and duties. One of the new duties of every citizen is to respect the national dignity of others and to fortify the friendship of the Soviet nations and nationalities.<sup>186</sup> Under Article 36, as before, citizens of different races and nationalities are promised equal rights.<sup>187</sup> But a new paragraph of that article restates the basic policy:

The exercise of these rights shall be ensured by the policy of all-round development and drawing-together of all nations and nationalities of the USSR, education of citizens in the spirit of Soviet patriotism and socialist internationalism, and the opportunity for using the mother tongue and the languages of the other peoples of the USSR.<sup>188</sup>

Language, the prime manifestation of nationality as well as a principal means of preserving it, is treated somewhat differently in an article

180. KONST. Preamble.

181. KONST. pt. I, ch. 3, art. 19.

182. *Id.*

183. See notes 183-190, *infra*.

184. KONST. pt. I, ch. 2, art. 16. Rational pooling of resources by the Union Republics is considered a major motive for their remaining in the Union, THE SOVIET STATE AND LAW, *supra* note 12, at 103.

185. KONST. pt. I, ch. 3, art. 25.

186. *Id.* pt. II, ch. 7, art. 64.

187. *Id.* pt. II, ch. 6, art. 36. Compare 1936 CONST. ch. X, art. 123.

188. KONST. pt. II, ch. 6, art. 36, para. 2.

under Part VII, on the judicial system.<sup>189</sup> Article 159 differs from its predecessor in only one respect: judicial proceedings are to be either in the language of the Union or Autonomous Republic, Autonomous Region or Area, as previously provided, or in the language spoken by the majority of the population in the locality.<sup>190</sup> The result seems to be that the principal courts of the Republics with a predominantly Russian or Russian-speaking urban population — that is, all major Soviet courts — may abandon the language of the Republic.

### 3. Historical and Theoretical Origins

The principles of self-determination, socialist federalism and voluntary union have a long and complex history and are bound up with the formation of the USSR itself. Although Lenin devoted considerable attention to the "national question" in relation to the structure of the Soviet state,<sup>191</sup> it was largely Stalin's more centralist conception that determined the state structure as embodied in the 1924 and 1936 constitu-

189. *Id.* pt. VII, ch. 20, art. 159.

190. *Id.* Compare 1936 CONST. ch. IX, art. 110. Shchetinin refers to the growing role of the Russian language, B. V. SHCHETININ, *supra* note 24, at 10. Thus the "Soviet nation," formed through the merger of peoples, will be linguistically Russian, Meissner *supra* note 27, at 136.

191. For Lenin's nationality policy, see his *Critical Remarks on the National Question* in V. I. LENIN, 20 COLLECTED WORKS 17 (1964), and *The Right of Nations to Self-Determination*, *id.* at 393. See also *id.* at 71, 109, 222, 290; V. I. LENIN, 25 COLLECTED WORKS 91, 99 (1964); V. I. LENIN, ON POLITICS AND REVOLUTION 315-19 (1968). For a selection of Lenin's writings on the national question in Russian, see generally V. I. LENIN, VOPROSY NATSIONAL'NOI POLITIKI I PROLETARSKOGO INTERNATSIONALIZMA (1965). For a summary and analysis, see R. PIPES, *supra* note 38, at 41-49, 110-12, 269-93. For references to Lenin's writings on the national question, see the index in V. I. LENIN, 31 SOCHINENIYA at 268-71 (3d ed. 1930-1933). It should be noted that Lenin's policy, while in part tactical, was not inconsistent. The rights to self-determination and secession were intended to establish national equality, but not to be exercised. Moreover, most nationalisms were considered bourgeois and therefore to be opposed. For an account of Lenin's peculiar dialectical reasoning on this question, see A. ULAM, THE BOLSHEVIKS 453-55 (1965). Professor Ulam emphasizes the lasting effects of Lenin's "tortuous" logic and "paradoxical" personality on both Party and state, *id.* at 455, vii. With regard to the form of the multinational socialist state, Lenin rejected the "national-cultural autonomy" of the Austrian socialists Renner and Bauer, as well as the "autonomization" concept of Stalin, in favor of a federal structure based on the national-territorial principle. The 1918 RSFSR Constitution adopted a principle of "national-territorial autonomy." While Lenin's views changed more than once between 1913 and 1923, it appears (especially from his 1922 memorandum on the national question) that he favored less centralization than was advocated by Stalin, approved by the XIIth Party Congress, and written into the 1924 USSR Constitution during Lenin's incapacity. See R. PIPES, *supra* note 38, at 269-93. The English translation of Lenin's 1922 memorandum is found *id.* at 282-87. The Russian text was first published in the Soviet Union in KOMMUNIST, No. 9, 1956, and is found in V. I. LENIN, 45 SOCHINENIYA 356-62 (5th ed.), as well as in V. I. LENIN, VOPROSY NATSIONAL'NOI POLITIKI I PROLETARSKOGO INTERNATSIONALIZMA 164 (1965). See also Lepeshkin, *Mnogoobrazie vidov sovetskoi federatsii*, PRAVOVEDENIE, No. 5, 1975, at 17; Suchecki, *Geneza i rozwój j wielonarodowego państwa radzieckiego (1922-1972)* PRAWO I PRAWO, Nov. 1972, at 3-12.



tions.<sup>192</sup> The divergence between Leninist principles and a Stalinist constitutional order created a certain tension, despite the proclamation in the Stalin constitution of a voluntary union of equal republics in a federal state.<sup>193</sup>

Khrushchev's program of de-Stalinization, in part a return to Leninist conceptions, involved exposure of his predecessor's centralist and indeed genocidal practices.<sup>194</sup> A series of acts extending the formal rights of the Union Republics resulted in several constitutional amendments.<sup>195</sup>

P. S. Romashkin provided an early ideological explanation of the new policy in his July, 1960 report.<sup>196</sup> The Party and state, he said, had returned to Lenin's policy of extending the Republics' sovereign rights.<sup>197</sup> The revised constitution should emphasize this. At the same time, he urged that the people be educated in the spirit of socialist internationalism and Soviet patriotism, to foster the drawing-together<sup>198</sup> of nations.<sup>199</sup> For Lenin had written that the inevitable merger<sup>200</sup> of nations would only arrive after the full liberation of oppressed nations, that is, their right to free secession.<sup>201</sup> The full development of each was the condition of the full amalgamation of all.

192. See R. PIPES, *supra* note 38, *passim*.

193. 1936 CONST. ch. II, art. 13.

194. Meissner, *supra* note 27, at 130. See Suchecki, *supra* note 191, at 13. See generally V. M. CHKHIKVADZE, *THE STATE, DEMOCRACY AND LEGALITY IN THE USSR 170-72* (1972); DENISOV & KIRICHENKO, *supra* note 23, at 99-101; GRIGORYAN & DOLGOPOLOV, *supra* note 17, at 42-43; Meissner, *supra* note 27, at 130-31.

195. Two important extensions of republican rights had, however, been enacted February 1, 1944. One, allowing the Union Republics diplomatic relations with foreign states, became art. 18 (a) of the Constitution; the other, allowing for republican military formations, became art. 18 (b). Among Khrushchev's most important legislation were the May 31, 1956 liquidation of the Union Ministry of Justice (transferring its functions to the Union Republics); the statutes of Feb. 11, 1957, extending the Republics' powers in judicial and administrative-territorial matters and rehabilitating five nationalities punished by Stalin; the statute of May 10, 1957, making presidents of republican Councils of Ministers members of the Union Council of Ministers; an August 29, 1957 decree transferring the administration of various economic and cultural matters from the Union to the republican Councils of Ministers; a June 22, 1959 decree of the Council of Ministers on the competence of the Union and of the Republics in economic affairs; the statute of January 13, 1960, liquidating the Union Ministry of Internal Affairs (transferring its functions to the republican Ministries); and the statute of December 13, 1962, granting planning powers to the Union Republics. The March 1963 reforms, however, narrowed the Republics' powers. See sources cited in note 55, *supra*.

196. Romashkin, *supra* note 64, at 86-87.

197. *Id.*

198. *Sblizhenie*.

199. Romashkin, *supra* note 68, at 86-87.

200. *Sliianie*.

201. Romashkin, *supra* note 68, at 86-87; V. I. LENIN, *VOPROSY NATSIONAL'NOI POLITIKI I PROLETARSKOGO INTERNATSIONALIZMA* 113 (1965). Lenin wrote this in his 1916 thesis *On Socialism*

At the XXII<sup>nd</sup> Party Congress in October, 1961, First Secretary Khrushchev developed this doctrine into the theory of the "blossoming"<sup>202</sup> of sovereign nations simultaneously with their gradual drawing-together into a homogeneous society.<sup>203</sup> This doctrine was incorporated into the new Party Program.<sup>204</sup> Such a novel dialectical answer to the national problem — realizing the Soviet nations' rights through a program of development, yet only for the purpose of their ultimate merger — must have been attractive to both centralizers and de-centralizers. Yet as one American commentator noted, the Soviet peoples in reality had fewer rights than in the first years after the Revolution, and the over-all continuity of Soviet nationality policy had not been broken.<sup>205</sup>

The old question of national sovereignty, revived in Khrushchev's doctrine, was answered by one Soviet scholar in classic Marxist-Leninist fashion: republican sovereignty existed in an "organic unity" with that of the Union, having been expanded rather than sacrificed upon entry into the USSR.<sup>206</sup> The Republics' broadened rights would in fact facilitate their convergence with each other.<sup>207</sup>

The question remained, however, of how to delimit union and republican competences in legislation. Another scholar gave a more straightforward answer: the methods of delimiting competences should be alterable whenever "the Party thinks a given set of social circumstances at a given moment is more or less important."<sup>208</sup>

Meanwhile, Khrushchev had been deposed and another Party congress held.<sup>209</sup> While the "de-centralizing" trend in legislation continued for a few years,<sup>210</sup> the end of de-Stalinization soon became apparent in a

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*Revolution and the Right of Nations to Self-Determination. See V. I. LENIN, 22 COLLECTED WORKS 325, cited in V. M. CHKHIKVADE, supra note 194, at 163.*

202. *Rastsvet*.

203. Meissner, *supra* note 27, at 136. On the dialectical relationship between national development and convergence, which lead to the synthesis of the "new historical community of people," see B. V. SHCHETININ, *supra* note 24, at 10-11, and especially 31.

204. Meissner, *supra* note 27, at 136.

205. Pipes, *Nationality Policy Since Stalin*, PROBLEMS OF THE PEOPLES OF THE USSR, June 1963, at 9-13.

206. Manelis, *The Unity of Sovereignty of the USSR and of Sovereignty of the Union Republics during the Period of the Full-Scale Construction of Communism*, quoted in THE SOVIET LEGAL SYSTEM, *supra* note 66, at 34-35 (trans. from SOVETSKOE GOSUDARSTVO I PRAVO, July 1964, at 17).

207. *Id.*

208. Kirichenko, *The Problem of Delimiting Constitutional Law of the Union and of the Republics*, quoted in THE SOVIET LEGAL SYSTEM, *supra* note 66, at 34 (trans. from SOVETSKOE GOSUDARSTVO I PRAVO, Nov. 1967, at 53).

209. Khrushchev was ousted in October, 1964. The XXIII Party Congress was held in March-April, 1966. See Meissner, *supra* note 27, at 116.

210. By a joint act of October 4, 1965 the Party Central Committee and the USSR Council of Ministers transferred some competence in economic and cultural matters to the republican Councils

new centralism,<sup>211</sup> in a renewal of Stalin's concept of the nation and in a revitalized policy of russification.<sup>212</sup> At the XXIVth Party Congress General Secretary Brezhnev advanced the thesis of the "Soviet people" as a higher manifestation of the human community than the nation.<sup>213</sup>

Scholars, however, could not agree on the chronology of the process of "blossoming," "convergence" and "merger."<sup>214</sup> Their differences led them to theoretical positions varying from the demand that republican rights be further extended, to the assumption that the federal state structure must wither away.<sup>215</sup> V. M. Chkhikvadze, Director of the Academy of Sciences' Institute of State and Law, represented what was perhaps the ideological median.<sup>216</sup> Blossoming and integration, he asserted, would continue throughout the period of the building of communism, as a process that must not be artificially accelerated.<sup>217</sup> Only with the full development of communism "on a world scale" would there occur a total legal and political amalgamation of nations.<sup>218</sup> Like Khrushchev's original formula, this scheme assured the centralists that total merger was the goal, yet postponed this so indeterminately far into the future as to afford the autonomists some comfort.

With the drafting of a new constitution, Soviet scholars and officials were squarely faced with the question of what nationality policy it was to reflect. At the 1969 meeting of the All-Union Scientific Research Institute for Soviet Legislation, convened to coordinate the necessary research

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of Ministers. V. M. CHKHIKVADZE, *supra* note 194, at 172. By a constitutional amendment of August 3, 1966 the number of a Union Republic's representatives in the Soviet of Nationalities of the USSR Supreme Soviet was raised from 25 to 32. Rusinova & Rianzhin, *supra* note 24, at 83.

211. On August 3, 1966 a central Ministry of Education was created; on November 25, 1968 the central Ministry for the Protection of Public Order (created July 26, 1966) was transformed into a renewed Ministry of Internal Affairs; on August 31, 1970 the central Ministry of Justice was re-established. Meissner, *supra* note 27, at 135. These were "union-republican" ministries, i.e., functioning through the corresponding ministries of the Republics. *Id.*

212. *Id.* at 136, 138. During the USSR 50th anniversary celebrations in 1972, Mr. Brezhnev also renewed the Stalinist dogma of the leading role of the Russian people. *Id.* at 130, 137. Writing in 1974, B. V. Shchetinin asserted that a great role in the formation of the new Soviet people had been played by all nations and nationalities of the USSR, "and above all the great Russian people," B. V. SHCHETININ, *supra* note 24, at 32. Russification is a traditional policy of the imposition of the Russian language and culture upon colonized peoples. When implemented in the Russian-dominated USSR, "internationalism" as a policy of the elimination of national differences is, in effect, a means of russification. See I. DZIUBA, INTERNATIONALISM OR RUSSIFICATION? (1968). Mr. Dziuba, a Soviet literary critic, has since been persuaded to change his views.

213. Meissner, *supra* note 27, at 136. Glorification of the "supra-national" Soviet people thus coincides with the glorification of the Russian language, culture and people. See note 190, *supra*.

214. See notes 215-18 and accompanying text, *infra*.

215. Meissner, *supra* note 27, at 137-38.

216. M. V. CHKHIKVADZE, *supra* note 194, at 175-79.

217. *Id.*

218. *Id.*

preparatory to drafting, M. G. Kirichenko referred to drafts of new laws widening the Republics' legislative competence as "constitutional acts."<sup>219</sup> He intended them to affect the constitution itself.<sup>220</sup> He also suggested that the federal structure of the multi-national state be emphasized and that the sovereignties of Union and Republic be clearly defined.<sup>221</sup> V. E. Guliev advocated an unambiguous constitutional declaration of the right of nations to self-determination.<sup>222</sup>

In his speech on the fiftieth anniversary of the USSR, General Secretary Brezhnev emphasized a different aspect of Soviet policy.<sup>223</sup> Declaring the national problem solved, he proclaimed the birth of a "new historical entity," the Soviet people, educated in the spirit of "internationalism" and "Soviet patriotism."<sup>224</sup> He repeatedly referred to the drawing-together of nations, and linked this process to the integration of the economy.<sup>225</sup> Indeed, the following year a system of "economic regions" was instituted, transcending republican borders so as to promote national along with economic integration.<sup>226</sup> But as Party Secretary K. F. Katushev asserted, the doctrines of economic integration, national convergence, and the "new historical entity" of the Soviet people must not be regarded as infringements on union-republican national sovereignty.<sup>227</sup> Nevertheless, in the long run the Soviet nations are considered temporary entities, and the ideal is a "unitary, centralized democratic state."<sup>228</sup>

In his May 24, 1977, report on the draft of the new constitution, General Secretary Brezhnev declared that the Federal structure was

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219. Meissner, *supra* note 27, at 198-99.

220. *Id.*

221. *Id.* at 199.

222. *Id.* at 200.

223. L. I. BREZHNEV, ON THE POLICY OF THE SOVIET UNION AND THE INTERNATIONAL SITUATION 185 (1973).

224. *Id.* at 197, 205, 212.

225. *Id.* at 206-13.

226. Breslauer, *supra* note 9, at 20.

227. Katushev, *Strengthening the Unity of the Socialist Countries is a Law of the Development of World Socialism*, KOMMUNIST No. 16, 1973, trans. and reprinted in SOVIET LAW AND GOVERNMENT, Winter 1974-1975, at 5, 9, 18; Guliev & Shchiglik, *supra* note 113, at 15.

228. Groshev, book review in VOPROSY ISTORII KPSS, No. 6, 1974 (reviewing I. P. TSAMERIAN, THEORETICAL PROBLEMS OF THE ESTABLISHMENT AND DEVELOPMENT OF THE SOVIET MULTINATIONAL STATE), trans. and reprinted in SOVIET LAW AND GOVERNMENT, Spring 1975, at 100-106. Before 1961, Tsamerian had expressed the idea that "blossoming" was to precede "convergence," but later accepted the simultaneity of the two processes. Meissner, *supra* note 27, at 137 n.195. The reviewer now attacks his contention that the Soviet nations will survive up to the appearance of mature communism on a world and not just a national scale. Tsamerian, he declares, "even debates" authors who say that Lenin emphasized the transitional character of the Soviet federation on the path to complete unity of nations. *Id.* at 105. He chides scholars who limit themselves to opposing national oppression and supporting self-determination and who thus misinterpret Lenin's nationality policy. Groshev, *supra* at 101.

sound and needed no changes.<sup>229</sup> Likewise, the Republics' sovereign rights should remain.<sup>230</sup> Referring to the need for simultaneous development and drawing-together of the Republics, he stressed that this process required a "genuinely democratic" combination of union and republican interests.<sup>231</sup> Evidently, the detailed working-out of this doctrine would be left largely to future policy decisions.

On balance, it appears that the main concessions to non-Russian and union-republican interests in the new constitution are in the nature of formal "bourgeois right," intended to vanish along with all vestiges of the bourgeois state when socialism is transcended. The re-distribution of real power, however, tends to favor the center. Furthermore, the long-term programmatic mandates aim for the withering-away of nations as well as of their state forms. The integration of the economic basis is evidently expected to effect the integration of the nationally differentiated superstructure. Finally, the Party supremacy discussed above promises to replace the federal state structure with a highly centralized mechanism primarily organized along functional rather than national lines.<sup>232</sup> The practical result would be the fusion of all nations into the dominant Russian mold.

### C. FOREIGN POLICY

For the first time a separate chapter of the USSR Constitution is devoted to foreign policy.<sup>233</sup> The emergence of the Soviet Union as a world power with a system of socialist allies<sup>234</sup> and two major adversaries has received constitutional recognition. A definition of the USSR's international position, and a statement of its policies toward allies and com-

229. L. I. BREZHNEV, *supra* note 8, at 20-21.

230. *Id.*

231. *Id.*

232. L. SCHAPIRO, *THE GOVERNMENT AND POLITICS OF THE SOVIET UNION* 63 (1967).

233. KONST. pt. I, ch. 4. For a brief historical account of Soviet foreign policy, see G. VON RAUCH, *A HISTORY OF SOVIET RUSSIA* 145-54, 191-215, 261-306, 396-417, 450-72 (6th ed. 1972). See also Aspaturian, *Soviet Foreign Policy*, in *FOREIGN POLICY IN WORLD POLITICS* 174 (4th ed. R. Macridis 1972). For an ample history and analysis of Soviet foreign policy to 1973, see A. ULAM, *EXPANSION AND COEXISTENCE* (2d ed. 1974). For a summary of foreign policy decisions of the XXV Congress, see Ushakov, *Sovetskoe gosudarstvo v bor'be za osushchestvenenie vneshno politicheskoi programmy XXV s'ezda KPSS*, *SOVETSKOE GOSUDARSTVO I PRAVO*, April 1977, at 131. For major documents of the Congress, see *MATERIALY XXV S'EZDA KPSS* (1976). For a summary of its western policy, see Marantz, *Foreign Policy: The Soviet Union and the Noncommunist World*, in *THE TWENTY-FIFTH CONGRESS OF THE CPSU*, *supra* note 9, at 89-94.

234. As Romashkin pointed out in his 1960 report, socialism had "broken out of one country" and become a world system. Romashkin, *supra* note 68, at 81-82.

petitors,<sup>235</sup> have been deemed appropriate in both the Preamble and body of the new constitution.<sup>236</sup>

The Preamble sets out the historical background and defines the role, policy and specific tasks of the USSR in world affairs.<sup>237</sup> Portraying the Bolshevik revolution as the beginning of "mankind's world-historic turn from capitalism to socialism,"<sup>238</sup> it suggests a universal, continuous and inevitable process centered on the development of the Soviet state. The Preamble declares that the Soviet victory in World War II, which strengthened the international position and prestige of the USSR,<sup>239</sup> furthered its goals of socialism, national liberation, democracy, and world peace.

Each of the succeeding sections of the Preamble makes a reference to foreign policy.<sup>240</sup> The section that defines present-day Soviet society refers to the working people as "patriots and internationalists."<sup>241</sup> Implicit in this phrase is the presumed identity of Soviet and world socialist interests. It is this assumption that allows the USSR to maintain a revolutionary posture while pursuing traditional political goals.

In the programmatic section, the list of the state's principal tasks includes national security, peace, and international cooperation — ostensibly a defensive program.<sup>242</sup> The last sentence defines the present international position of the USSR as "part of the world socialist system," and refers to the Soviet people's "international responsibility."<sup>243</sup> Here again, the tone is conservative.<sup>244</sup>

The chapter on foreign policy consists of three articles.<sup>245</sup> Article 28 presents the basic formula of peace, security and international cooperation.<sup>246</sup> The elements of the policy of peace and security include peaceful

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235. Romashkin wrote that the revised constitution should reflect the policy of cooperation among the socialist countries, as well as that of peaceful coexistence of states with different social systems. Romashkin, *supra* note 68, at 82.

236. KONST. Preamble; pt. I, ch. 4, arts. 28, 29, 30.

237. KONST. Preamble.

238. *Id.*

239. *Id.* The word "prestige" was added in the final text. This seems to reflect Soviet concern with world opinion.

240. *Id.*

241. *Id.*

242. *Id.*

243. *Id.*

244. Compare 1924 CONST. Preamble, especially paras. 1 and 2, and the last clause; 1918 CONST. art. 1, ch. 2(3)(d) and art. 1, ch. 3(6). Robert Sharlet characterizes the new constitution as a "moderate, middle-of-the-road document." Sharlet, *supra* note 6, at 3.

245. KONST. pt. I, ch. 4, arts. 28, 29, 30. The word *politika* is used to mean both "policy" and "politics."

246. *Id.* art. 28. These phrases are apparently taken from the United Nations Charter; U.N.

coexistence,<sup>247</sup> general and complete disarmament,<sup>248</sup> and the prevention of wars of aggression. It is notable that the list of foreign-policy goals in the second paragraph of this article begins with the ensuring of favorable conditions for the building of communism in the USSR and the protection of Soviet state interests.<sup>249</sup> This neo-Stalinist emphasis on Soviet development rather than international revolution could well be called "communism in one country."<sup>250</sup>

Only after these primary goals come the references to the international communist movement.<sup>251</sup> "Strengthening the positions of world socialism" sums up the aims of present East Bloc policy.<sup>252</sup> Support of national-liberation struggles refers to the revived internationalism of Khrushchev's neo-Leninist Third World policy.<sup>253</sup> Disarmament and peaceful co-existence are keynotes of post-Stalin policy towards the capitalist West.<sup>254</sup> Finally, the prohibition of war propaganda, set out in a separate paragraph, re-affirms the basic policy of peace.<sup>255</sup>

Article 29 sets out eleven principles guiding USSR relations with other states.<sup>256</sup> Most of them are universally recognized. Notable, however, is the echo of Helsinki<sup>257</sup> in the principles of the inviolability of borders and the territorial integrity of states, referring to international

CHARTER Preamble art. 1, para. 1 and art. 1, para. 3. They may symbolize the incorporation of international law into the law of the Soviet state. See notes 257, 259, *infra*.

247. With Khrushchev's de-Stalinization of 1956 the theory of capitalist encirclement was abandoned and replaced by a renewed doctrine of "peaceful co-existence" among countries with different social systems. Kotok & Farberov, *supra* note 29, at 12; Romashkin, *supra* note 64, at 82.

248. Added in the final text.

249. KONST. pt. I, ch. 4, art. 28, para. 2. The latter phrase was added in the final text.

250. In April, 1925 Stalin advanced a new doctrine of "socialism in one country." G. VON RAUCH, *supra* note 233, at 168. It held that it was possible and indeed necessary to achieve socialism in a strong, secure state before spreading the revolution worldwide. Clearly contrary to Lenin's internationalism, it was accompanied by the theory of "capitalist encirclement" necessitating military and industrial fortification.

251. See notes 252-53 and accompanying text, *infra*.

252. See notes 257-260, *infra*. See BREZHNEV, *supra* note 223, at 84, 104, 108, 113. It is held that there is no contradiction between the doctrines of supporting national liberation and of peace, since the conditions for national liberation arise of their own accord, without military interference. See, e.g., the recent article by Kunaev, Politburo member and First Secretary of the Kazakh Party organization, *V bor'be za ukreplenie mira i druzhby mezhdu narodami*, KOMMUNIST, July 1977, at 31.

253. Lenin urged that the Bolsheviks agitate among the underdeveloped and colonized peoples, cooperating temporarily with bourgeois national-liberation forces. See, e.g., Lenin, *Preliminary Draft of Theses on the National and Colonial Questions*, in ON POLITICS AND REVOLUTION 315-19 (J. Connor ed. 1968) (especially Points 9 and 11). See also 1918 CONST., art. I, ch. 3, sec. 5.

254. See note 235, *supra*.

255. KONST. pt. I, ch. 4, art. 28, para. 3.

256. KONST. pt. I, ch. 4, art. 29.

257. Final Act, Conference on Security and Cooperation in Europe, Helsinki, 73 THE DEP'T OF STATE BULL. 323, 324, 325. The Final Act was signed August 1, 1975. On the "echo" of Helsinki, see note 3, *supra*.

recognition of the European *status quo*.<sup>258</sup> The mention of non-interference in internal affairs and respect for human rights and basic freedoms also presages Belgrade.<sup>259</sup>

Article 30 deals specifically with the "world socialist system" or "socialist community," of which the USSR is called merely a component part.<sup>260</sup> Friendship, cooperation and comradely mutual assistance are as traditional in this context as "socialist internationalism."<sup>261</sup> The meaning of these principles, however, doubtless includes the gloss of the 1968 "Brezhnev doctrine."<sup>262</sup> Economic integration and the "international socialist division of labor" are evidently to provide the material basis for a more unified pro-Soviet bloc, and may even constitute the first stage of national convergence and merger on the Soviet federal model.<sup>263</sup>

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258. In his report to the XXIV Party Congress in 1971, General Secretary Brezhnev had called for a European conference on peace and security and for the recognition of post-war borders. L. I. BREZHNEV, *supra* note 223, at 108, 113.

259. These conflicting principles figured prominently in the follow-up conference in Belgrade. On the summary document of March 8, 1978, mentioning non-interference but omitting human rights, see N. Y. Times, March 9, 1978, at 7, col. 1.

260. KONST. pt. I, ch. 4, art. 30. On the European "socialist community," see Z. BRZEZINSKI, *THE SOVIET BLOC* (1967); *THE NEW COMMUNIST MANIFESTO* (D. Jacobs ed. 1961); Aspaturian, *The Soviet Union and International Communism*, in *FOREIGN POLICY IN WORLD POLITICS* 238 (R. Macridis ed. 1972).

261. In the final text, the latter received a dignifying epithet as "the principle of" socialist internationalism. KONST. pt. I, ch. 4, art. 30. For a definition, see 2 *ENCYCLOPEDIA OF SOVIET LAW* 618-619 (F. Feldbrugge ed. 1973).

262. In the 1950's de-Stalinization released the forces of polycentrism in Eastern Europe. Khrushchev's successors sought to reverse the trend. Immediately after the 1968 occupation of Czechoslovakia, they produced the "Brezhnev doctrine." It justified intervention by holding that a threat to socialism in any one country was a threat to all socialist countries. In his report to the XXIV Party Congress in 1971, Mr. Brezhnev referred to the "extraordinary conditions" caused in Czechoslovakia by the anti-socialist forces of imperialism and counter-revolution, which had necessitated "internationalist assistance" by the Soviet Union. In a conciliatory vein, he explained that the world socialist system was "still a young organism," bearing the marks of earlier epochs. To determine the proper line to follow, each country had to find the correct combination of the general and nationally specific in social development. BREZHNEV, *supra* note 223, at 90-92. The Czechs had evidently over-stressed the nationally specific.

263. At an October 1973 conference on *The Development and International Cooperation of Socialist Nations* held in Moscow, Party Secretary K. F. Katushev, presenting Soviet experience as a guide for the socialist world, spoke of the "development" and "convergence" of the nations of Eastern Europe. He asserted that the internal national interests of the socialist states had come to coincide "to quite a great degree" with their common international needs. Thus, on the basis of economic integration through CMEA, Soviet nationality policy could be applied without as well as within the USSR. Katushev, *Strengthening the Unity of the Socialist Countries is a Law of the Development of World Socialism*, *KOMMUNIST* No. 16, 1973, reprinted in 13 *SOVIET LAW AND GOVERNMENT*, Winter 1974-75, at 3-18. The goal was evidently a merger of nations and states on the Soviet model, in effect, an extension of the Soviet system. Mr. Katushev, who supervised relations with other ruling Communist Parties, is said to have played a role in the Czech intervention of 1968. The same Party plenum which approved the draft constitution and released N. V. Podgorny from the Politburo saw Mr. Katushev's transfer from the Party Central Committee, where he was replaced by K. V. Rusakov, to the Council on Mutual Economic Aid. *KOMMUNIST*, May 1977, at 5; Sharlet, *supra* note 6, at 1.



Chapter 5, also new, indirectly concerns foreign policy.<sup>264</sup> Entitled "Defense of the Socialist Fatherland,"<sup>265</sup> it consists of two articles, the first of which refers to "defending the gains of socialism."<sup>266</sup> Both specify the Armed Forces. They supplement the Articles in Chapter 7 on the citizens' duties of defense and military service.<sup>267</sup> Also among the citizens' duties listed in Chapter 7 is the "internationalist duty" to further friendship and cooperation with peoples of other countries as well as the "maintenance and consolidation of world peace."<sup>268</sup>

The specific addition to USSR jurisdiction of Soviet relations with international organizations has been mentioned above.<sup>269</sup> Additionally, the Council of Ministers is now empowered to take measures to ensure state security.<sup>270</sup> Matters within the scope of its "general guidance" in foreign relations are also enumerated.<sup>271</sup>

Finally, the creation of the new vice-presidential post in the Presidium facilitates the Party General Secretary's assumption of the state presidency.<sup>272</sup> As newly-elected President Brezhnev said in his June 16, 1977 speech, this gives logical form to his representation of the USSR in foreign affairs.<sup>273</sup> It is a rationalizing measure, confirming Party leadership in this area.

On the whole, the foreign-policy articles of the new document reflect old policies. Romashkin's proposals have been adopted, Khrushchev's theses incorporated. The USSR's place in history and in the contemporary world is defined, its legitimacy reaffirmed. True, its long-term historical role remains dynamic. Yet even the revived militarism emphasizes defense. Ostensibly, the present concern is to protect and reinforce what has already been won.<sup>274</sup>

264. KONST. pt. I, ch. 5.

265. The Soviet translation reads "Motherland," though etymologically *otchestvo* is equivalent to "Fatherland."

266. KONST. pt. I, ch. 5, arts. 31-32.

267. KONST. pt. II, ch. 7, arts. 62-63. Compare 1936 CONST. ch. X, arts. 133, 132.

268. KONST. pt. III, ch. 7, art. 69. This is perhaps another manifestation of the educative role of the state in preparing the masses for communist self-administration. If so, it is evidently assumed that nations will survive into the communist era.

269. *Id.* pt. III, ch. 8, art. 73 (10). Compare 1936 CONST. ch. II, art. 14. See *supra* note 149.

270. KONST. pt. V, ch. 16, art. 131 (4).

271. *Id.* art. 131 (6). Compare 1936 CONST. ch. V, art. 68 (4).

272. KONST. pt. V, ch. 15, art. 120. Compare 1936 CONST. ch. III, art. 48. The new post of First Vice-President of the Presidium of the Supreme Soviet was filled by V. V. Kuznetsov. *Pravda*, Oct. 8, 1977, at 1, col. 3.

273. *KOMMUNIST*, June 1977, at 7.

274. For an account of the 60th anniversary celebrations of the Bolshevik revolution and an appraisal of the USSR's foreign policy, see *N.Y. Times*, Nov. 8, 1977, at 3, col. 1. Ambassador Toon is

#### IV. CENTRIFUGAL FORCES

As a register of the historical moment, the 1977 USSR Constitution presents the Soviet leaders' official interpretation of domestic and global developments. While their ideological posture precludes recognition of certain centrifugal trends,<sup>275</sup> the programmatic aspects of the document seem intended to counter-act them. These centrifugal tendencies are manifested on a social, national and international level.

On a social level, the development of specialized professional groups causes inter-elite rivalry.<sup>276</sup> The Party is forced to compete with managerial, military, scientific and other "interest groups" while trying to bind them into a homogeneous whole.<sup>277</sup> Party control becomes increasingly difficult as technology exceeds the skills and comprehension of Party overseers.<sup>278</sup> At the same time, the growth of a privileged bureaucracy threatens to obstruct central control.<sup>279</sup> The common symptoms of post-industrial social malaise tend to undermine Soviet ideals of civic behavior. Social alienation, considered a malady of capitalist society, seems to underlie the problems of alcoholism, theft<sup>280</sup> and juvenile delinquency<sup>281</sup> in the USSR. Finally, the persistence of religious practices and national traditions, officially considered relics of earlier historical epochs, challenges the development of a de-spiritualized and ethnically undifferentiated Soviet culture.<sup>282</sup> In these ways society increasingly diverges from the model of social uniformity under centralized Party control.

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quoted as characterizing the Soviet Union as "more conservative" than before. *Id.* In his speech during the celebrations Defense Minister D. F. Ustinov promised arms control and international detente. *Id.* at 3, cols. 2-3. Indeed, the anniversary parade included no ICBMs. *Id.* at 3, col. 3. But T-54 tanks later showed up in Ethiopia. The Sunday Times (London), Jan. 22, 1978, at 10, col. 1.

275. See note 12 *supra* and accompanying text.

276. See H. SKILLING & F. GRIFFITHS, *supra* note 13.

277. *Id.*

278. *Id.*

279. See Breslauer, *supra* note 9, at 19.

280. It is revealing that Article 61 includes a new civic obligation to combat the theft of state property. KONST. pt. II, ch. 7, art. 61.

281. Soviet legal periodicals of the past decade are replete with discussions of criminal and lesser offenses among minors. On juvenile crime in the USSR, see N.Y. Times, Mar. 5, 1978, at 1, col. 3; Mar. 6, 1978, at 1, col. 3.

Soviet paternalism is not limited to minors, however. Professor Berman finds that Soviet jurists are developing a new, "parental" type of law to educate the masses for the age of communist self-administration when both state and law will have withered away. BERMAN, *supra* note 2, ch. 10. The new constitution mentions "rearing the man of communist society" as a principal state task, KONST. Preamble; and, in the language added in the final text, expresses the state's concern for "the moral . . . upbringing of Soviet people", KONST. pt. I, ch. 3, art. 27.

282. See note 14, *supra*. For an example of spiritual and cultural challenge to official values, see Moroz, *A Chronicle of Resistance in Ukraine*, THE UKRAINIAN QUARTERLY, Spring 1971, at 13-37.

On a national level, centrifugal tendencies develop as the interests of various peoples diverge from those of the Russian center. Economic development, expected to produce national assimilation, often serves merely to reinforce national loyalties with local economic interests.<sup>283</sup> In this way, traditional nationalism reappears in modern form.<sup>284</sup> The combination of a mushrooming indigenous population and heavy industrialization in Soviet Central Asia, for example, threatens traditional Russian dominance.<sup>285</sup> This threat will become more serious when the Russians become a ruling minority in the USSR.<sup>286</sup> Nor can Soviet ideology, with its simplistic explanations of nationalism, deal adequately with this problem.<sup>287</sup> Thus in his speech on the fiftieth anniversary of the USSR General Secretary Brezhnev, insisting that the "old" national problem had been solved, blamed outside influences in combination with surviving nationalistic tendencies for creating "new" problems.<sup>288</sup> Whether such a doctrinaire approach can solve them is questionable.

The centrifugal national tendencies within the USSR are mirrored in the East Bloc,<sup>289</sup> where the example of Yugoslavia has encouraged a search for independent roads to socialism.<sup>290</sup> East European non-conformity in turn finds its reflection in the Western European communist parties. Drifting further from the Soviet orbit as they approach power in their own countries, the Eurocommunist parties exhibit tendencies similar to the nationalist deviations both within the USSR and among the East European states.

At the same time the Third World, coyly resisting Soviet overtures,<sup>291</sup> seems at least equally prone to the magnetism of China. An aggressive political and military competitor, China poses a serious ideological threat to the USSR as well. With its contradictory policy of supporting national liberation movements abroad while suppressing

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especially 22-23, 26, 28-36. Mr. Moroz, a Soviet historian, is currently serving a 14-year sentence for anti-Soviet activity.

283. See Rakowska-Harmstone, *supra* note 14.

284. *Id.*

285. *Id.*

286. *Id.*; Szporluk, *supra* note 14.

287. R. PIPES, *supra* note 38, at 296 (on early Bolshevik ideology).

288. L. I. BREZHNEV, *supra* note 223, at 211. Similarly, no less an authority than V. M. Chkhikvadze recently wrote that dissidents cannot be a product of Soviet society, but must have been created abroad, Chkhikvadze, *Prava cheloveka i ideologicheskaya bor'ba, SOTSIALISTICHESKAYA ZAKONNOST'*, August 1977, at 19-23.

289. See note 260, *supra*.

290. See generally Z. BRZEZINSKI, *supra* note 12, at 185-209; Ulam, *Titoism*, in *MARXISM IN THE MODERN WORLD* 136-63 (M. Drachkovitch ed. 1965).

291. *E.g.*, Somalia recently evicted Soviet advisers and deprived the USSR of two naval bases on the Horn of Africa. N.Y. Times, Nov. 15, 1977, at 1, cols. 1, 2.

nationalities at home,<sup>292</sup> the USSR exposes itself to Chinese ideological attacks which discredit it before the developing countries.

## CONCLUSION

Ideologically, there is little of novelty in the 1977 USSR Constitution. It closely follows Khrushchev's doctrines announced at the XXIst and XXIIInd Party Congresses, and incorporates significant theses of the 1961 Party Program. It adopts most of P. S. Romashkin's proposals of 1960, and incorporates major de-Stalinizing reforms of the Khrushchev era.<sup>293</sup> Although from 1964 the Constitutional Commission was headed by Mr. Brezhnev, one could properly call this a "Khrushchev Constitution."<sup>294</sup>

Practically, the thrust of the new constitution is to consolidate Soviet achievements against the threat of centrifugal forces. A strengthened Party role is to help arrest the trends of social differentiation and produce a homogeneous society. Extension of certain formal republican rights might appease autonomist demands, as a policy of convergence and merger "solved" the national problem. Applied to the East European socialist state system, this model procedure would help unify and strengthen it. The loyalty of both ruling and non-ruling communist and workers' parties is to be affirmed under the principle of socialist internationalism. At the same time, a conciliatory posture before the capitalist states would permit an aggressive Third World policy, avoiding nuclear confrontation without sacrificing the internationalist mission of communism.<sup>295</sup>

Three questions remain. First, it is uncertain whether the Party as a political elite can long control the various interests that arise in a highly technological society of increasing complexity. The diminishing impor-

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292. Strictly speaking, there is no contradiction, since the nationalism of developing countries is considered progressive, while that of the more developed non-Russian Soviet nations is considered bourgeois and reactionary.

293. Indeed, the document contains few points which are not to be found in the code law, statutes, or scholarly commentary. Sharlet, *supra* note 6, at 4-5. Robert Sharlet describes the 1977 draft as "a generally pragmatic statement of already existing practice and principle." *Id.* at 3. For Romashkin's 1960 proposals, see note 68, *supra*.

294. To call it a "Brezhnev Constitution" would be inaccurate. Sharlet, *supra* note 6, at 4 (on slightly different grounds).

295. The Soviet Union has avoided direct participation in hostilities wherever the desired results could be achieved in other ways, e.g., armaments, technical advisers and foreign troops. In Ethiopia, however, such means have proved inadequate. The Sunday Times (London), Jan. 22, 1978, at 10, col. 1; N. Y. Times, Feb. 25, 1978, at 1, col. 3.

tance of ideology tends to undermine Party influence. Although it subsumes all Soviet elites, the Party itself may become fragmented to the point at which it becomes a mere vehicle for competing interests.

Second, the dialectic of national development and amalgamation may prove to be a double-edged weapon. While officially endorsed only with major qualifications, the doctrine that the Union Republics must experience complete state development may prove literally true. It is doubtful that the USSR could survive such a full blossoming of nations. Yet it is uncertain whether it can avoid it.

Third, deviation in Europe and disloyalty in the Third World, combined with Chinese influence, obstruct new conquests and threaten old ones. Burdened with a heritage of expansionism and instability, the Soviet state may no longer be able to appease internal demands with external successes. Whether a policy of mere consolidation will contain these forces of disunion remains to be seen.

1977 CONSTITUTION	1936 CONSTITUTION				
	Chapter	Article <sup>a</sup>	Chapter	Article (if same <sup>b</sup> )	Article (if modified <sup>c</sup> )  Article (if combined <sup>d</sup> )
<b>PREAMBLE</b>  <b>PART</b>  Political and Economic I "'Fundamentals of the Social-Political and Economic Structure".	1 "The Political System".	1	I		1
		2	I		2,3
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		8 <sup>e</sup>			
		9 <sup>f</sup>			
		10	I		4
	2 "The Economic System".	11	I		6
		12			
		13	I		10
		14	I		12
		15			
		16			
	3 Social Development and Culture.	17	I		9
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	4 Foreign Policy.	23			
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	5 Defense of the Socialist Fatherland.	29			
		30			
		31			
		32			
		33	II		21
	6 Citizenship of the USSR. Equality of Citizens.	34	X		123
		35	X		122
		36	X		123
		37			
		38	X	120	
II The State and the Individual.					

7 The Fundamental Rights, Freedoms  
and Obligations of Citizens of the USSR.

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8 The USSR—a Federal State.

III The National State Structure of the  
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V The Higher Organs of State Power and Administration of the USSR.

15 The Supreme Soviet of the USSR. SL

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<sup>a</sup> Articles are numbered according to the final text. Divergences from the numbering in the draft are indicated in the notes. Substantially new articles are given in italics, viz., 3. <sup>b</sup> Articles (or portions thereof) of the 1936 Constitution which remains *substantially* unaltered are listed.

<sup>c</sup> Articles (or portions thereof) of the 1936 Constitution which have been *substantially* modified are listed.

<sup>d</sup> Articles (or portions thereof) which have been combined without substantial modification are listed. Articles both combined and modified are listed under "Article, if Modified."

<sup>e</sup> Added in final text, but based partly on art. 16 of the draft.

<sup>f</sup> Arts. 9-16 correspond to arts. 8-15 of the draft.

<sup>g</sup> Art. 68 corresponds to art. 67, para. 2 of the draft.

<sup>h</sup> Arts. 68-101 corresponds to arts. 68-100 of the draft.

<sup>i</sup> Added in final of the draft text.

<sup>j</sup> Arts. 103-126 correspond to arts. 101-124 in the draft.

<sup>k</sup> Art. 125 includes art. 125 of the draft as well as art. 123 of the draft, which is entirely new.

<sup>l</sup> Arts. 127-174 correspond to arts. 126-173